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LEGALIZATION OF ILLICIT DRUGS—PART II

HEARING

BEFORE THE

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

SEPTEMBER 30, 1988

Printed for the use of the
Select Committee on Narcotics Abuse and Control

SCNAC-100-2-11

U.S. GOVERNMENT PRINTING OFFICE

95-568 WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

H961-18

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HEARING ON LEGALIZATION OF ILLICIT DRUGS

FRIDAY, SEPTEMBER 30, 1988

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL,
Washington, DC.

The select committee met, pursuant to call, at 9 a.m., in room 210, Cannon House Office Building, Hon. Charles B. Rangel (chairman of the committee) presiding.

Present: Representatives Charles B. Rangel, James H. Scheuer, Frank J. Guarini, Michael G. Oxley, Lawrence J. Smith, Benjamin A. Gilman, Lawrence Coughlin, E. Clay Shaw, Jr., Robert K. Dornan, and Edolphus "Ed" Towns.

Also Present: Representative Robert Garcia.

Staff Present: Edward H. Jurith, staff director; James Alexander, professional staff; Barbara A. Stolz, professional staff; George R. Gilbert, staff counsel; Michael J. Kelley, staff counsel; Elliott A. Brown, minority staff director; Richard Baum, minority professional staff; Deborah E. Bodlander, minority professional staff; Tina Stavros, staff assistant; and Robert Weiner, press officer.

Mr. RANGEL. Good morning. The House Select Committee on Narcotics Abuse and Control hearing will come to order and will continue.

This is the second day of hearings on the question of decriminalization and legalization of narcotic drugs. Yesterday over a period of about 8 hours we had the opportunity to listen to some 20 or so witnesses. Today we will listen to a dozen more.

As I assured those people who want to discuss this issue, this committee is prepared to meet and have hearings as long as we think there is something that has to be said on this very sensitive and sometimes emotional issue. I think yesterday's hearings proved that people who talk about legalization are basically talking about opening up discussion, having debate, but very few have thought through the problems and the risks that would be involved, and hardly any have agreed that we have done all we can on the local and State and certainly the Federal level before we would throw up our hands in frustration.

Certainly it is interesting to note that, while there has been a failure in the Federal Government to establish a "treatment on demand" policy where everyone who really wants treatment can get it, many of the mayors who are most vocal in this issue have done very little to expand the treatment part of their policies in the cities, and even in the city of New York we have no city rehabilitation programs but instead rely solely on the State to provide that type of treatment.

It is also interesting to note that, while most all of the advocates believe that the so-called law enforcement part of this program has been ineffective, the truth of the matter, as testified to by the Drug Enforcement Administrator, Jack Lawn, is that on the Federal level we have only 2,800 agents. According to his testimony, some of them are involved in going to schools to try to educate the kids against the dangers of drugs. So there has not really been that Federal effort in law enforcement.

It would seem to me that perhaps mayors who believe there should be changes in the direction in which we are fighting this problem might attempt to introduce those ideas to their city councils or, as Senator Joseph Galiber has done, to introduce legislation in the state legislature to attempt to change some of the things they are doing there.

This discussion, if you will, needs a lot more research before witnesses can suggest to the U.S. Congress that we enter into a debate. It seems like those that come from our colleges, who are teaching our youngsters, do have resources that they can research and give more than just an item that we can discuss.

We have gone through a lot of time and effort to reach treaties and agreements with the drug-producing countries. I think that some thought has to be given to how we would break those treaties and how we would go to the United Nations and say we have changed our mind, that as a consumer nation we think now that we should expand the market of importing cocaine and heroin and marijuana as a part of our national policy.

Of course, if we don't want to do that, then we have to explore the potential of having our farmers go into the market of cocoa leaves and opium. I don't think there would be much opposition from them, knowing the problems they are facing.

But, still, what we are saying is that the processing, the laboratories, the conversions, the diversion, is something we have to consider, since people are concerned about the illegal market. That would be a part of the problem we would have.

For those who say take the profit out of it, we are talking about taking the profit from the street bums and transferring it to the multinational pharmaceuticals, and then we are talking about how these drugs would be regulated.

So there are basic questions. Whose community are we going to put these licenses in? Who is going to dispense the drugs? Is it going to be a public service program, as Mayor Schmoke suggested? Is it going to be local or State level? Is it going to be the Federal Government who has the obligation to make certain we pay for them? Will there be drug stamps? Will we expand Medicaid, have it included in private insurance policies? Are we really transferring the expense of criminal activity to an expense of health activity, as more and more children are born addicted to drugs?

I don't think there is any dispute that as alcohol became legal, more people drank it and more kids became teenage alcoholics. But we don't treat alcoholics by giving them alcohol.

These are serious questions that I think we have to bring to the table when you ask your Congress to say, "Let's talk." There is nothing to debate. You have to bring something to the table and show that this makes sense. Then comes the debate.

That is why, when I found so many people who wanted to testify, Ben Gilman and I directed staff to expand the hearings into the next day. That is why we had no problem in meeting just as long as we could, as long as the witnesses could, last night.

If there is anybody who believes they have something to say and we take a look and find out they have had the background and experience, that they could make a contribution to this discussion, I assure you that we will continue to look into this matter until at least people have agreed that there is a lot of work they have to do before they bring this issue up again.

Let me take this time to yield to the Republican Ranking Member of this committee who, along with me, has been very successful in keeping politics out of our deliberations. It is very unusual and I must admit that as the time gets closer to the election and the buttons for our Presidential choices get bigger and bigger, it certainly has not interfered with the work of this committee. There is a great deal of pride that I have in being able to work with Ben Gilman.

Mr. GILMAN. Thank you, Mr. Chairman.

We welcome having the additional catalyst here today. We regret, in trying to get the best of thinking around the nation, we had to cram a lot of material and issues into a very short period of time.

We welcome the panelists to today's hearing. I particularly welcome Dr. Musto before us. He has done a good job in the past of trying to advise this committee of some of the strategy and some of the goals that we should be seeking. I know that Dr. Musto has given himself to other panels and other groups in Washington who have been giving attention to this issue.

Yesterday we certainly had a good cross-section of testimony. I am still unconvinced that we should be moving in the direction of legalization, but we certainly heard a number of thought-provoking ideas that should be addressed.

Of course, what we are all seeking is a better strategy, a more effective way of combating this problem that has been ruining our institutions, affecting the minds of our young people, not only in this nation but in other nations.

If we can evolve, as a result of these hearings, a better approach, then we will have accomplished a great deal.

I will not take any further time from our panelists. We look forward to hearing from them, particularly Dr. Musto.

Thank you.

Mr. RANGEL. We have been joined by Congressman Larry Smith. We still try to say he is an original New Yorker. He is the chairman of the Subcommittee on Foreign Affairs that deals with the problems we have in international drug trafficking.

Larry was explaining to the advocates that we would have some problems in undoing those treaties we tried so hard to get. Also I mentioned the problem we would have with the farmers who would want consumers to buy American.

Mr. SMITH. Mr. Chairman, thank you for holding this series of hearings.

I am rather dismayed that this kind of subject still has the support it seems to have, although I think most Americans are strong-

ly opposed to legalization or decriminalization. I think these hearings will dispel the myth that seems to still exist that a strong push against drugs, which everyone who comes before this committee seems to advocate, includes, however, some form of legalization of that very same drug group.

It seems to me the hearings will have a very positive effect in laying this unfortunate and recurring mistaken impression to rest.

The chairman is certainly correct: we have a significant problem overseas. We have significant domestic forces in this country which still are in a position where they cannot give us the full cooperation that we need. Outside the country we have the same kind of problem, which is exacerbated by the economic conditions, which is made worse by militaristic governments, rebel groups and the like.

However, this country has never relied on anyone else for its own domestic law enforcement. We have never been in a position where we could not enforce our own laws because other people were involved. We have the capability, and we have the obligation to do that.

I have seen first-hand over the years, and so have the chairman and Mr. Gilman for many years in working on this problem as well, the ravages of drugs. You name it, I can tell you about it. Frankly, I am not under any circumstances going to be the one who has to cast the vote to decriminalize or normalize the use of what I consider to be very, very significantly dangerous, debilitating, toxic substances.

This Government, the people of this country, do not expect us to abandon our capability to keep people safe and protected from this because it is difficult. They expect us to find the the right answers. I am sure this series of hearings will assist us in trying to find these answers.

I think we can come to some realities about how we can best solve the problem of drugs. We keep making a chip-away at it, but not every part of the Government wants to cooperate all the time. I think the hearings are going to be another in a series of things that are going to be important, that people can see and hear and read about, and hopefully we can come to a better understanding of what we have to do in the future in order to rid ourselves as much as we can of the problem of drugs in our society.

Thank you.

Mr. RANGEL. Our first witness is Dr. David Musto of Yale University, a historian who can give an overview of the problems of drugs in our country.

I want to thank you, Dr. Musto, for the patience you have had with me and my staff in arranging your time to be wtih us. We had hoped that we could have you kick off the whole hearing, but political and time considerations made that difficult. It was very kind of you to consider being our lead witness today.

As we pointed out to you, we have the 5-minute restriction in terms of time, but if you were able to follow us yesterday you could see the Members have a very deep interest in this subject. I had the privilege to read your entire statement, and it is so well done. We will distribute that to the Members and it will serve as a pertinent part of the record.

Thank you.

Dr. MUSTO. Thank you, Mr. Chairman.

TESTIMONY OF DAVID F. MUSTO, M.D., DRUG HISTORIAN, YALE UNIVERSITY

Dr. MUSTO. Making a very brief overview of the drug history in America, I would say in the 19th Century many drugs—cocaine, heroin and morphine—were legal and the consumption of these drugs reached a peak about the 1890's and 1900. I think the point to make is that we had legal drugs in the 19th century. Cocaine was legal, heroin and morphine were legal.

It was the result of the rising consumption of these drugs and the effects of these drugs on individuals, communities and families that led us to enact drug laws in this country. They did not come about from nowhere; they came about as a response to legalized and widespread drug use.

The first cocaine epidemic—we are in the second one now—began in the mid-1880s when purified cocaine became available. A year after the processes to allow purified cocaine to be available, about 1885, the Park David Company of Detroit provided cocaine in 14 different forms, completely legal. You could have coca cigarettes, cocaine for sniffing, injecting, rubbing on as a salve. Any way you wanted cocaine, you could get it.

The pharmaceutical companies said this was so popular the factories had to work overtime and it spread throughout the United States.

Cocaine was an original ingredient of Coca Cola and it was not taken out of Coca Cola until 1900, when the image of cocaine had plummeted. During the first 10 or 15 years cocaine was considered the ideal American tonic. It was recommended for baseball players. I understand some still take it.

I think the use of cocaine in the first 10 or 15 years illustrates that a new drug which seems to have remarkable advantages can spread throughout society. It may take 15 years or so for people to realize that the effects of cocaine make it a very dangerous drug. By 1900 or 1905 cocaine was considered the most dangerous drug in the United States, from having been considered practically the all-American tonic 15 years before.

We passed laws against it. In New York State there was the Al Smith Cocaine Law in 1913. Congress passed legislation in 1914. The United States started the World Anti-Narcotic Movement and presided over the international convention of 1912 which sought to control the use of cocaine worldwide, as well as opium and opiates.

One important thing to learn from the cocaine epidemic around the turn of the century is how a drugs' image can evolve among the public. A drug comes in and it is seen as okay: in moderation the drug is safe. This greatly changes for some drugs, such as cocaine, to where it doesn't pay to take it once. This transition in image from being something like a beverage to a poison takes many years. That happened with cocaine. It is happening with cocaine again.

From my study of the problems of heroin and cocaine in this country, it is quite evident that the key element in reducing demand is this change of attitude toward the drugs, which has

been going on in the last 15 or 20 years. When you do have this, you have the basis for decline in demand.

Bolivia, Peru and other countries grew coca leaves before the epidemic of the 1880s and they grew it afterwards, and they grew it during that time. The mere growing of the substances in itself is not the determinate factor; it is the attitude the public has toward the substance.

With regard to the argument, "Why don't you let this go on in a gradual process uninhibited or unaffected by the attempts at legal control?" I would say there are a lot of things in our society, including racial discrimination, which we don't allow to follow a leisurely course. If we see that something is a danger and a bad thing, we ask for laws to help us in restricting it.

I do think laws have a place to play in this decline side of the drug problem. We should be very careful about what happens in the decline phase. When the nation has an almost unanimous consensus against drugs, we are liable to make serious public policy errors in the direction of overkill.

In the decline phase around the turn of the century, racial prejudice and other elements tarnished our fight against drugs.

I see ways now in which we indulge in overkill. We think we can get rid of this problem in 2 or 3 years, but history suggests it is a very gradual process. I think '78 or '79 was the peak of tolerance toward drug use in this country. I am sure you will recall there was a drive for legalization at that time.

It is interesting to look at the arguments for legalization of cocaine in the 1970's and compare it to the 1980s. In the 1970's the argument was this was a relatively harmless drug, it doesn't cause problems if you don't use too much. Now the argument for legalization of cocaine has none of the benign images of cocaine. The arguments are: we will reduce profits, stop crime and turf wars. We have made a very important transition in our public attitude from seeing cocaine as okay unless misused, to seeing it as bad in itself. It is the groundwork for a decline in the amount of cocaine used.

I will be glad to take your questions.

Mr. RANGEL. Thank you.

[The prepared statement of Dr. Musto appears on p. 115.]

Mr. RANGEL. We have been joined by an outstanding Member of this committee, Jim Scheuer from New York, who is an author as well as a person who has fought against drugs since he came to this Congress and probably before that. He is somebody who does not accept the status quo and he continues to challenge, knowing that this Congress and this nation can do better. I welcome him.

Mr. SCHEUER. Thank you, Mr. Chairman.

I want to say our chairman is a remarkable leader and has done an outstanding job in leading this committee and this Congress, and he is capable of helping us out of the awful situation that surrounds us.

Mr. RANGEL. We have, of course, Robert Garcia, whose district has been hit so badly by the importation of drugs. We thank you for visiting with us.

Doctor, yesterday one of our Princeton assistant professors indicated that the minority community really had no idea how much better off they would be if drugs were legalized.

I have had the opportunity to see what drugs have done to the minority community, especially the legalization of methadone. It doesn't seem to be introducing, in my community, rehabilitation, job skills, and it hasn't weaned people off of heroin.

I look at the thousands of people in my district and other districts, and I get the clear impression that the same way people were talking in my district in 1970, they are talking in 1988 and saying that if that is what those people want and by legalizing it it's going to cut down on crime, then give it to them and give it to them without any sense of any obligation to them as human beings. And worse than that, without any sense of obligation to the thousands of babies that are being born addicted not to just cocaine, not to just heroin, but addicted to a legal drug which U.S. taxpayers are paying for.

Do you have any observation as to the impact of the legalization of drugs, some or all to the poorer segment of the United States?

Dr. MUSTO. This is an extremely crucial issue. I believe in the next 30 or 40 years, much of the furture of the United States will rest on how we deal with the problems and issues of the inner city. This could not be a more crucial issue, in my opinion.

What history has to say about this is that you can overcome drug use. In my testimony, I quote the experience of Jane Adams, the first American woman to win the Nobel Prize. She fought cocaine in Chicago in 1907 to try to get a control over the problem. Of course, the cocaine problem did decline.

One of the saddest things in the argument for legalization is the argument that these are harmless drugs and if people had them, they would be okay. I don't think there is anywhere where the damage is greater than in the inner cities, with the blacks and Hispanics. They wreck family life.

It seems to me that we are talking here about the actual, physical effects of drugs. It is true that 15 years ago people said cocaine was a harmless drug. It doesn't seem that way now.

My argument is that it is a gradual process; it does not take place in 1 or 2 years. The message of the history of this problem is that this problem can decline. We essentially wiped out cocaine as a problem in the country in the 1930's and 1940's. It had been a big problem at the turn of the century.

If we allow drugs to be distributed in the inner city that ruin community cohesion, it is not only disaster for those communities but for the United States as well.

Mr. RANGEL. Are you satisfied that the Congress and the administration has done all that it can to provide rehabilitation for those people?

Dr. MUSTO. No, I am not at all satisfied. I think it is absolutely astounding that with the AIDS problem we have, that rather than providing treatment for people and getting them off the use of needles, it appears one of the suggestions for a solution is to hand out needles. I don't know what is going through people's minds who will not provide treatment for people who want to get off drugs. To me it is an abandonment of the inner city.

This is one of the things I want to warn about, in this declining phase. We can get so angry at drugs and drug users we are liable to write off the cities. In the cities really you find the most staunch

opponents to drug use. If we rely too much on law enforcement, if we simply have draconian penalties, we are going to write off the inner cities. This would be a very, very sad thing.

I do believe if someone needs treatment and wants treatment it is inexplicable to me that we don't provide it at that moment.

Mr. RANGEL. I would like to work with you, Doctor, because as a historian, I could use the expertise you have developed.

In my opinion, the great threat to the United States is drug abuse, especially as it relates to inner-city problems. No communist came to my community and snatched a child from a mother. No communists are causing the degree of hold-ups or muggings. It seems to me if this country is vulnerable, it will be ignoring what is happening to the homeless, the jobless and the homeless who find drugs the only way of life.

Mr. Smith.

Mr. SMITH. Doctor, I am curious about your very significant statement with reference to the long way we have come in determining that these drugs are in fact very debilitating, toxic and very much a threat to the personal health of the public at large.

I have been told the largest single cause of birth-defect children today is in fact the drug addiction of either one or both parents. Is that something you could discuss for just a moment?

Dr. MUSTO. Well, that is a very serious problem. I would include alcohol in that if you are going to talk about birth defects, because you should not ignore the role of alcohol in this area. I don't know whether you include that when you say drug addiction, but, yes, this is a common cause of birth defects.

Then not only do you have a defective child, but the parents are in no condition or position to take care of the child so it is a tragedy for the whole trio.

Mr. SMITH. Who pays the bill?

Dr. MUSTO. The public pays.

Mr. SMITH. So these people who are involved in drugs wind up forcing the bill for the impact of those drugs onto society?

Dr. MUSTO. Yes. And you have to keep in mind that the shifting of this burden to society would not change if you legalized the drug and provided it to them as they wanted it.

Mr. SMITH. If I am not mistaken, there is another member of the panel who will be coming to testify as a witness, from a group in favor of legalizing marijuana. From his testimony, we get the same tired, old refrain: Marijuana is not toxic; it doesn't have side effects; it doesn't cause problems. If you use it, you can mellow out and be a wonderful human being.

Can you give us information about the side effects, the birth defects from that use?

Dr. MUSTO. I don't think there is any substance you can study that you would not find that there are not some serious problems. I see the greatest issue on marijuana the effect on adolescents, the family, in driving and other hazardous activity.

Mr. SMITH. What does marijuana do to your frame of reference in terms of things like visual, manual capability, the ability to drive an automobile, motor and sensory?

Dr. MUSTO. True, it interferes with that. I remember 15 years ago when we first started talking about this, it was thought that

marijuana improved driving. There was some study that indicated that. Now we no longer believe that is the case.

One of the problems with marijuana is that the purity of marijuana or percentage of THC in it keeps going up because of effective botanical manipulations. So it is becoming more powerful all the time.

The one thing I would say about marijuana this generation is making up its mind about marijuana now for the first time. We never had marijuana at this level at any time in our history. When we passed the laws in the 1930's we had very little around. It was not based on an enormous problem at that time.

Our society is deciding now whether or not we think marijuana is a suitable substance for legalization. It appears to me by looking at public opinion polls and the University of Michigan study, that our attitude since 1978 or 1979 had been becoming much more negative toward marijuana. I am fascinated by this. It has paralleled attitudes toward cocaine and its substances.

So with marijuana, we are making our minds up now about what we are going to do about it. Every indication is that as we become more familiar with it, people become more alarmed by its effects.

Mr. SMITH. Doctor, you are a professor of history of medicine and recently you wrote a book called "The American Disease," dealing with the history of drug use in the United States, right?

Dr. MUSTO. Yes.

Mr. SMITH. As a medical professional, would you in any way, shape or form recommend to any person who sought your advice as a medical doctor, other than the possibility of using some form of marijuana to treat the side effects of chemo or radiation therapy of people who have certain cancers, to reduce the symptoms of the cure?

Mr. SMITH. It reduces the side effects on a person with a possibly terminal disease. But beyond that, as a medical doctor, would you recommend the use of any of these drugs in any way, shape or form other than compounded into legal prescription drugs, to any patients?

If we legalized marijuana or cocaine to allow your children to use it, would you say, "Sure, go ahead; as long as it is legal, no problem"?

Dr. MUSTO. No.

Mr. SMITH. I am not asking you on a moral basis. I am asking you as a medical professional who has been trained.

Dr. MUSTO. You have to step back for a moment. When you say cocaine, cocaine is still used to some extent for anesthetic for nose and eye operations. Morphine is used as a pain medication. But other than strictly medical uses, I would not recommend it and I would do what I could to stop it.

Mr. SMITH. Why, Doctor?

Dr. MUSTO. Because of the effects of these drugs on family cohesion and social cohesion.

One of the effects is that it isolates the person from society. They are quite stimulated by these substances, and it decreases the likelihood of social interaction. That is one of the reasons why I feel this is a serious matter with regard to people in the inner city who

are trying to work together to accomplish very important goals. They have great problems facing them.

I feel one of the sad effects of these drugs is that it makes social cohesion more difficult to attain.

Mr. SMITH. Doctor, my time is about to expire, but le me ask, aside from the damage you see socially as well as physically to the individual using the drugs, what is the potential for damage for other people from that person using drugs? What is the effect of cocaine or Crack?

I don't know how anybody who wants to legalize cocaine could say, "No, we will not legalize Crack." What is the possibility of a person being hurt or challenged, be driven into when they are driving a car? I want to know the effect of that on the persons standing next to them.

Dr. MUSTO. Those kind of effects are the reason for the cocaine laws. The substance was completely legal and we turned against it because of the effects on individuals, and essentially wiped out cocaine from the society.

At some point I would be happy to discuss why I think this has returned and some of the errors we made in the decline phase.

Mr. SMITH. Thank you.

Mr. RANGEL. Mr. Scheuer.

Mr. SCHEUER. Thank you very much, Mr. Chairman, and I want to congratulate you once more on this superb set of hearings that I hope will constitute the beginning of our thoughtful analysis and possible alternative to the present failed system.

I enjoyed the witness's testimony very much. I want to ask a couple of historical questions.

First, what do we have to learn from the Dutch and British experience?

Dr. MUSTO. I will be very happy to discuss that.

Mr. SMITH. I will then give you the second question.

What do we have to learn from our prohibition experience? And there, of course, that involved trade-off. We ended prohibition. It came very, very rapidly after the beginning of the discourse. We did it on a cost-benefit basis. We knew there would be some increase or we supposed there would be some increase in alcohol addiction but we wanted to get rid of the criminogenic characteristics of prohibition such as the Friday night massacre.

Looking back on prohibition, were we right historically to end it and what was the payoff and what was the cost of ending it? How would you apply that same philosophy to possible alternatives to our present penal approach to drugs?

You heard Mayor Schmoke and others talking about some tightly restricted availability of some drugs to some addicts. Can you see that manipulated and organized and structured in such a way that the benefits of changing the system, eliminating the profits, eliminating the awful explosion of urban crime, would, outweigh the costs if we can restrain and perhaps eliminate the costs of making some drugs available to some addicts sometime under very controlled and carefully thought-out restrictions?

Dr. MUSTO. All right. Let me deal with those questions.

Mayor Schmoke and I are going to be debating one another at Western Maryland College on November 2. I will be looking forward to dealing with some of the suggestions he made at that time.

Now, with regard to the British system. It has been said that the British had a heroin problem and they passed a law, the Dangerous Drugs Act of 1920, that allowed them to give out heroin, and by the 1930's, they had almost no heroin problem. What is the answer to this? Well, it is absolutely false.

They did pass a Dangerous Drugs Act of 1920, but why? Because the United States and other nations put the Hague Apium Convention into the Versailles Treaty. If you retified the treaty you had 12 months to pass a Dangerous Drugs Act and the British did so. Members of Parliament said, "Why are we passing an anti-drug law? It is the Americans that have the problem." The governments reply was the requirement of the Versailles Treaty. They had no major drug problem.

Some extravagant claims—in Ambics—for the "British system" are based on an error that the most elementary historical review of it would reveal.

Mr. SCHEUER. How about the last decade?

Dr. MUSTO. Their problem has become more similar to ours. We had heroin maintenance in New York State. We had about 30,000 registered heroin addicts in New York State in 1920. We had more experience with registered legal heroin than the British ever had. We decided this did not work for us.

Much of this is a matter of scale. If you have 100 people with a heroin problem, and you give them heroin, the public impact is small, but if you have hundreds of thousands of addicts, you are dealing with a different kind of problem. The issue of scale is very important.

The British experience has been more like the American one in the last 15 years. They have practically ceased the use of heroin. When I was last over to Britain and I talked to the home office person responsible for legal heroin distribution, he said there were only dozens of people on it. Everyone else had gone to methadone.

I remember in the 1970's when they gave out heroin and the disillusion felt about this program. I do not see the "British system" as a helpful model for our country.

Next I will take up prohibition. Prohibition did not happen just once in our country. 1920–33 was the second major prohibition in this country. The first widespread one was in the 1850's. The next was the 1920's. In the prohibition in the 1920's, we reached the lowest per capita alcohol consumption in American history. Historians and public health people are agreed upon this. But we repealed prohibition.

This is the way I look at it: We were able to reduce alcohol to about 1 gallon per person per year, maybe slightly less. We are now around 2.6 or 2.7. We hit a peak around 1980.

Alcohol had become a cultural element in many American lives especially immigrants from Eastern and Southern Europe. It was a cultural element, and although we were able to reduce alcohol to a very low level, we were never able to persuade the overwhelming majority of people that there was something fundamentally wrong with alcohol.

In my view, the essential element in ending a drug's use is that a consensus exists that the drug is bad in any amount. That is why cocaine was essentially wiped out.

In 1914, when the first prohibition amendment started through Congress, James R. Mann, more famous for the Mann Act, shepherded the Harris or Anti-Narcotic Act through Congress. No problem, Congress was opposed to narcotics.

The next week he led the fight against the prohibition amendment in the House of Representatives. Rep. Mann, like many others had a very distinct view between the two substances, namely because alcohol had become a major element in so many lives, culturally.

Talking to the current situation, most of the drugs—heroin, cocaine—have been found by the American people to be without merit in recreational use. We are in the process of making these decisions about marijuana at the present time.

I don't see that prohibition shows that we should abandon attempts to control these substances. I would say that prohibition shows that you can have a law about a substance that even is considered quite okay by many citizens and you can still reduce enormously the consumption.

The death rate from liver cirrhosis in the 1920s was cut in half by prohibition. It would have gone up if we did not have prohibition. You have to look at what it is you are dealing with and what is the response.

I would say prohibition does not offer any support for the idea of legalizing cocaine.

Mr. RANGEL. The Chair would like to recognize Mr. Guarini, one of the senior Members of our committee.

Mr. GUARINI. Culturally, our society is changing. I think we all agree that we have single-parent families, are taking the grandparents out of the family, and are replacing them with day care centers.

You say education is important. I agree with you, and we should do more for treatment rehabilitation. I also agree with you. Then the problem will eventually ameliorate.

Have you put in to your consideration the changes that are taking place, which are enormous in our society today, to base your conclusion on the fact that we don't need more penalties, we don't need more law enforcement, we don't have to go after users? What is your general opinion concerning these changes that are taking place that will effect the long-range drug problem in our country?

Dr. MUSTO. I hope I have made it clear I am not opposed to law enforcement in drug control. I think it is very important. To assume you will just wait around for people to stop using drugs is not a reasonable thing and it is something I don't think the American people would stand for either.

I see, from looking over the changes of attitude in this country, that a very profound change has taken place with regard to these drugs. We have moved from seeing them okay if you don't misuse them to not okay in any amount. I think a lot of antidrug efforts are going to appear to work better than they did 15 or 25 years ago: law enforcement and education will seem more effective.

When we were on the upturn of the drug problem in the early 1970's, education seemed to be of no effect at all. I think you will now find people more receptive to antidrug education for they have already learned a lot from looking around them.

I am not saying those things are not important. I also am not saying we should just stand idly by and see if it takes 10 or 20 years for this to go away. I am saying that one has to be careful that the antagonisms that grow up around drugs may become so enormous that they sanction any action labelled antidrug.

I will give an example. Cocaine had come to be seen as the most feared drug in America in the 1920's, but it was also seen by a majority of the population to be almost a black drug. It was not. It was given as a reason for black hostility in the South, at the time of lynchings, of voter disenfranchisement. Not only did cocaine become a source of problems, but it became an explanation for resistance to actions that should have happened.

So in this atmosphere, you have an almost magnetic attraction between otherwise distinct social problems. Drugs can become an explanation for just about anything.

I am not dealing with the specific issues currently before the Senate. I am simply saying that one has to be very careful that in the antagonisms to drugs, we don't indulge in overkill and also not become unduly disappointed when the drug problem does not go away in 2 or 3 years, because that is most unlikely.

Mr. GUARINI. As a historian and someone who has studied our culture as it relates to the medical field, knowing the behavior of people in our society, which I imagine is very complex because we have such a mosaic society, would you say that we would be advised to go after the user at all? Should there be penalties against the user, such as marking his passport, taking his driver's license away, or taking away certain benefits he would get as a citizen from, say, school, loans and such? Would that help?

Dr. MUSTO. My feeling is there should be some user responsibility or some user effect; if you have decided this is a very dangerous substance, you want to discourage use, but I am not able to comment on those specific recommendations contained in the bill. I have not seen the bill, and I have not considered what all the actions might be.

Mr. GUARINI. We could go after that part of the demand equation?

Dr. MUSTO. Yes. I think that it is effective and has been shown in other areas, such as in our battle against racial discrimination, that it is important to have laws appropriately applied.

Mr. GUARINI. And disincentives?

Dr. MUSTO. And disincentives. There is nothing unusual about that. I am concerned about the level to which it might go. For example, in the decline phase, as fewer and fewer people use the drugs in the 1930s, 1940s, and 1950s, the penalties got higher until in 1955 we had the death penalty. Senator Price Daniels put that ino his drug penalty bill. I remember interviewing Harry Anslinger, who was our Narcotics Commissioner for 32 years. I asked, "how did the death penalty get into Senator Daniels' bill?" Anslinger replied, he wanted to make this bill different from any other bill on this issue.

Congressman Boggs had sponsored an Act in 1951 that got a lot of attention by imposing mandatory minimum sentences. Senator Daniels went one better and put in the death penalty for anyone over 18 who sold heroin to anyone under 18. To my knowledge, no one was ever executed, but it did give that extra fillip to the bill it might have lacked otherwise.

Well, extreme punishments for possession is not practicable once you start having widespread use of drugs in society, and I think we have to be careful not, as drugs go down, to create draconian penalties which if enforced would completely fill the jails to overflowing, or if not enforced would lead the public to be extremely frustrated that the bill had been enacted, but ignored. I think you have to work between these two areas.

But we have had the death penalty before. As I said, no one died from it, but it was added more for public relations than as a law enforcement necessity.

Mr. GUARINI. We had it for kidnapping, and it seemed to be effective after the Lindberg trial.

Dr. MUSTO. I am just referring to drugs.

Mr. RANGEL. We have been joined by Mr. Oxley, a member of this committee, who has made an outstanding contribution on the House Floor, as well as the Select Narcotics Committee. He is a former FBI agent. We welcome you. You may inquire.

Mr. OXLEY. Thank you, Mr. Chairman.

If we are to believe the testimony from some yesterday, particularly Mayor Schmoke of Baltimore, we have lost the war on drugs. If we were to accept that as a fact, does the Baltimore Mayor's prescription of legalization win us the war on drugs; and if so, how does it do it?

Dr. MUSTO. As I understand Mayor Schmoke's proposal, he would have drugs carefully controlled, by doctors or other responsible people who would make these decisions. This proposal has no relationship to the actual drug user. I have been struck by the extreme difficulty of reaching out to people who have drug problems, especially in the United States. These are people who will not come near any organization, much less a doctor who is going to write a prescription for them. It is extremely difficult to reach them. This proposal would only deal with a small number of people.

If you are going to legalize drugs, you are going to have to make them as available as if they were commodities in supermarkets because any hurdle you put in is going to create a black market instantly. There are people who will not go to a doctor to get a prescription, who will not get involved with some sort of bureaucratic organization. I see the idea of a clinic system as unrelated to the people having the serious drug problems in the inner city. I don't see how it would work.

Mr. OXLEY. I am with you. I had some real problem following that testimony yesterday.

There has been a lot of discussion also about the difference between alcohol and drugs, and those who say alcohol is indeed a drug may very well be correct, but you pointed out that there is a certain degree of public acceptance of alcohol vis-a-vis hard drugs.

It seems to me that one can use alcohol in moderation with little or no damage to one's body or to others. It seems to me quite a dif-

ferent story as it relates to hard drugs. Do you agree with that premise?

Dr. MUSTO. Yes, in general. That depends on what you define as a hard drug. I do believe alcohol is a drug. There is no way around it, it is a drug. But it is one in which we have come in many of our cultures in America to accept as an ordinary everyday thing. I see increasing signs of turning against alcohol. If I were to make a guess, I would say alcohol in the next decade or so is going to go under a lot of scrutiny in the United States. It has already begun with the labeling campaign and awareness of the fetal alcohol syndrome.

But my point is not that it cannot cause some difficulties. It is that it is impractical to prohibit something which has achieved a cultural status in our country, and we have tried it twice, not just once. We did it earlier in the 19th century. I think the evidence on this is pretty straightforward.

Mr. OXLEY. If I could follow that up a bit, it seems to me that in the relation of alcohol versus, say, cocaine or heroin, the evidence is rather clear one can use alcohol in moderation but at least to me there is some question as to whether one can use cocaine, a crack derivative, or heroin in moderation. It seems to me further that it begs the question when you are talking about the effect that those drugs have.

Dr. MUSTO. Yes. Cocaine, in particular. I don't see any future for a cocaine maintenance program. That seems a very strange thing, because it only makes you more twisted in your thinking and more liable to difficulty the more you take. The idea you would simply maintain someone on it seems to me to be very peculiar.

There was an attempt when we were trying maintenance around World War I to maintain people on cocaine in several places, and they all dropped it. It was simply unworkable, although they continued with morphine maintenance in these areas.

Mr. OXLEY. What about tobacco, does that present a more difficult argument for you? There was some discussion yesterday about tobacco versus drugs, and I wonder what your opinion is on that.

Dr. MUSTO. What I am trying to do is to try to discuss the dynamics of why we control things and what our experience has been; and with regard to tobacco, I believe in American society tobacco has undergone that crucial shift being seen as something which is really essentially harmless, sort of like a beverage, to something that is seen as extremely dangerous in any amount. I would say tobacco has made this transition, and I anticipate further restrictions on tobacco in the future.

Mr. OXLEY. One last question: Have you seen any evidence that the highly publicized deaths of athletes like Len Bias and entertainers like John Belushi have had any effect on shocking people into avoiding drugs?

Dr. MUSTO. That is a very interesting question, because I look upon some event like that like almost an experiment, as if you are taking the temperature of the public. If you go back to the early 1970s, when some of the rock stars died of heroin or whatever, it didn't seem to have any remarkable effect. It was thought they got bad stuff, they used too much, or had some physiological idiosyncrasy.

But as we have changed our attitudes toward drugs and these people have died, such as Len Bias more recently, it has been interpreted as proof of what cocaine will normally do to you when you take it as directed, so to say. Our reaction to Bias and the football player who died and John Belushi has been to confirm this new attitude toward cocaine, that it is bad in itself.

If you go back and look at famous deaths in 1969 or 1970, you will see they were explained away as being an accident. And so I think that what these deaths do is tell us where the public is with regard to their attitude towards cocaine. The public has become extraordinarily negative towards it. And, as I say, that is the groundwork for reduction in demand.

Mr. OXLEY. Thank you. Thank you, Mr. Chairman.

Mr. RANGEL. I would like to recognize Mr. Garcia of New York, a strong supporter of the Select Narcotics Committee.

Mr. GARCIA. I will be very brief.

I have a statement I would like to enter into the record as part of this hearing.

Mr. RANGEL. Without objection.

[The prepared statement of Mr. Garcia appears on p. 126.]

Mr. GARCIA. Thank you.

I would just like to say to you, Doctor, back in 1967, 1968 as a young State Senator, I received a grant, and I went over to England to meet with some of the people who were there, and I remember sitting in a clinic, sitting and watching people shoot up, and I was amazed by it because prior to that, the only time I ever saw people shoot up were on roof-tops in areas like mine, and one of the things that came out of it for me was, as I sat and talked to these young people, each one of them without family said to me, "I want to get off, I want to get off."

And it seemed to me the English program, as it was then, it wasn't so much against the doctors as the chemists, the chemists were finding themselves in all sorts of trouble with prescriptions and giving out these prescriptions and being brought in by the home office and the law enforcement agencies over there.

So here we were treating the people who were "under the legalized system", and yet they themselves wanted no part of it. So it just seems to me that the advocates who have been pushing for the question of legalization should understand that as far as I am concerned from that little experience that I had back in 1968, that it didn't serve anybody's purpose, including the addicts. They were the first ones to say they wanted no part of it.

So I think my colleague, Frank Guarini from New Jersey, said this is very interesting testimony, and I would agree with him on that. I guess it is more of a statement, taking advantage of this moment that I have with you, Doctor.

The second part of it is that there is no question—I represent the South Bronx—there is no question that the problem is a major problem today, the profit motive is high, it is there, it is real, but it just seems to me whether we have the methadone clinics, which there are quite a few in my district, or we have these young people selling crack on the corner, the real problem is, as far as I am concerned, is not really to legalize. The bottom line is to try our abso-

lute best to educate and make certain young people understand the perils.

That is why I think these hearings have really been super, because we have heard a great deal of conversation about legalization as opposed to the present system we have now, and I don't think there is any easy solution, but I do know the solution has not really come about by just opening the flood gates. There are too many young people I think who would fall into that. I just want you to know I am deeply appreciative for your testimony, and I enjoyed it very much.

Dr. MUSTO. Thank you.

Mr. RANGEL. Mr. Scheuer of New York.

Mr. SCHEUER. We have all enjoyed and appreciated your testimony and have learned from it, Dr. Musto. You said in passing we ought to do more to mobilize the ghetto, as I recall it, something like that. Can you give us the specifics? Obviously any leadership that we can get from the ghetto would be far more valuable than a bunch of us from other communities and other backgrounds sitting around and moralizing. How do we mobilize the community of the ghetto, how do we use that as the most powerful tool for getting these young kids off addiction?

Dr. MUSTO. I would like to know whether Mr. Rangel agrees with me, but I think there is leadership in the inner city. I think you have seen it here in Washington where neighborhoods have demanded and pleaded for help against drugs, to free up their neighborhoods, their playgrounds, where we have had other groups like the Muslims come in and try to clean things up. By following it in the Post and Times, it seems that the Muslims have been a substantial help.

If you have a community pleading for help and someone goes in and helps them, that is a wonderful thing. You have pleading going on, and you have to respond to them. This is happening in New York City also. It is inexplicable that you could have people pleading for some sort of law enforcement in these areas, to get dealing out of these places, and we have to bring in some non-law enforcement agency or group in order to help. It seems to me that there should be no shortage of locating people who want support. It would seem to me a tragedy if these people in the inner city who are pleading for help for their families and their kids were to be left adrift and told, "Fend for yourselves, we are not going to do anything."

I think there is plenty to be done to help them right here in Washington and also in New York City. I don't think there is a shortage of people who are asking for organization and help, and it is happening in various parts of New York City too, but much more has to be done. To abandon them is, it is a tragedy that reminds me of the 1930s and World War II—abandonment.

Mr. RANGEL. It would be obscene, considering the tens of thousands of homeless people, or those who are crammed into welfare hotels, or our jails that are bursting with people, for us to come in and to say that before we can deal with rehabilitation, providing skills, providing homes, that our government has decided to embark on a program not to give skills, not to give hope, not to give jobs, not to give homes, but instead we have decided, and to

me it is a political question, a very serious political question, that for this particular group we have decided to pay for narcotics and to get doctors, doctors who we can't get to take care of common colds, pneumonia, serious health problems that people in poor communities have, to administrate drugs. We don't have the neighborhood clinics, we don't have the staffs at the public hospitals, we don't have care for everyone who needs it, but we have decided that we will underwrite a program to provide legal drugs.

I know that a lot of people who think this way do not discuss this on the high moral grounds as Mr. Scheuer, but I know there are certain people that believe that if these people can be contained, which is stupid, that we can move on and deal with the problems of the non-addict population. And the tragedy is that there are so many people without hope that drugs are the only way they think they can survive.

Dr. MUSTO. That is right. Without education or job opportunities, they lack two of the important reasons why middle-class Americans are reducing their drug use. If you don't have a job, drugs can interfere with your showing up at work at 8 o'clock in the morning, and if you have given up on education or education is inadequate, you can't stop using drugs so you can graduate.

The reason the middle class is the first group in our society to stop using drugs is because drugs interfere with achieving individual and family goals. The lack of education and opportunity are the very reasons why you have a problem in the inner city. If you leave the cities alone, drug use will just continue, it will not resolve. That is the present and future that worries me. Are going to write off the inner city? Will we believe they are a bunch of drug users and not realize the reasons the middle class are stopping are conditions we ought to support and make possible for people in the inner city?

It isn't just a matter of arresting people; it is a matter of providing hope and some goal, because drugs mainly are stopped because they interfere with your personal life and the goals you are trying to achieve. If you have nothing to work for, you have no reason to stop using the drugs.

Mr. RANGEL. Doctor, we will be in touch with you. We have agreed that rather than having the television lights, a group of us ought to get together, exchange ideas, and as long as other people are looking for new alternatives and are not talking about dispensing this poison in a legal way, we hope that we can have a discussion. Your testimony has really made an outstanding contribution, and, as I promised to you, it will be distributed to all of the members.

Thank you very much.

Dr. MUSTO. Thank you very much, Mr. Chairman.

Mr. RANGEL. The next panel will be split into two panels. I don't know whether they are divided because of their thinking, but we will have Dale Masi, Professor of the University of Maryland, School of Social Work and Community Panning; David Boaz from CATO Institute; Richard Karel, Northern Virginia Journalist; Marvin Miller, Member of the Board of directors of NORML, and then sitting on the other side is—has Dr. Brown been able to get here yet? Well, we are expecting at some point Dr. Lawrence

Brown, but if he is not here—Dr. Brown is here. Would you come right up, Doctor. Ray and Gloria Whitfield, who have drug problems. Are they with us? And Paul Moore, the Development Director of the Scott Newman Center.

We have a full panel. And for those of you who have been following these hearings, the members do want to make inquiries, and you could help us do that by confining your prepared statement to five minutes with the understanding that, without objection, your full statement will be in the record.

And since Professor Masi has to leave, we will make an exception. If there are people who have a question of her, rather than wait until both panels, we will yield to that. Why don't you start.

TESTIMONY OF DALE MASI, PROFESSOR, UNIVERSITY OF MARYLAND SCHOOL OF SOCIAL WORK AND COMMUNITY PLANNING

Dr. MASI. Mr. Chairman, committee members, and those assembled, thank you for inviting me to testify today on this important issue. I shall address the question only from my area of expertise, namely the workplace. I shall provide some facts and several examples about drug abuse in the workplace showing why the workplace cannot afford legalization of illicit durgs. I will then submit recommendations for solutions to the committee.

For your information, from 1979 to 1984, I developed and directed the model Federal employee assistance program from the Office of the Secretary at the U.S. Department of Health and Human Services. I am presently a professor at the University of Maryland, specializing in teaching and evaluating programs for a variety of employers, including national corporations, Federal agencies, and small businesses.

I think it is very important because I think most of the speakers—I have heard all of the testimony, Mr. Chairman—and it seems to me most of the testimony has addressed drugs as associated with youth, and I think I would want to emphasize the fact that adults are also taking these drugs, both legal and illicit.

Facts: In previous testimony before this committee, in September, 1984, I stated that I had seen a dramatic need for an increase in drug programs in industry. As evidenced by the cases which I shall describe, today there is an even greater need for more programs. It is critical to first recognize a few facts.

First, a majority of legal and illicit drug abusers are in the workplace. These are employed people. It is a mistake to see this only as a problem of the young.

Second, alcohol, a legal drug, is the primary drug of abuse in the workplace.

Third, prescription drugs, also legal drugs, are the second largest group of drugs abused by the American worker.

Fourth, the most recent survey tells us 19- to 25-year-olds are the most frequent users of cocaine, with 25- to 30-year-olds being the second most frequent user group, not the young teenager. Legalize it, and it will outdistance the former two drugs.

The workplace bears the effects, as well as the cost, of drug abuse by paying escalating health insurance bills. Many of the nation's costly industrial problems which result from drug abuse are

increasing tremendously; i.e. absenteeism, excessive sick leave, accidents, rising health claims and increased workers compensation claims. Work stress which is often associated with drug addiction is now payable under worker's compensation. Legalization will not stop these costs to industry, it will increase them.

The work place is being forced to address the issue head on. They can't wait. Companies are investing in EAPs, drug testing, and whatever else our experts recommend. The following cases typically represent employees with addiction problems in the American workplace throughout each of the States in our country. They are real, life examples taken from my consulting work. I have many of such cases. Legalization will cause more of the same, resulting in an impossible situation for American business.

First, a subway maintenance worker, self-referred and seeking help for alcohol and cocaine problems which culminated in the breakup of his 15-year marriage. This person called an EAP counselor after he had started drinking—he stated that he did not want to live and wanted to kill his supervisor.

Second, an air traffic controller, self-referred because he had been arrested for a felony and public intoxication charge. There had been continuous problems with the law and personal finances. The employee's roommate was a cocaine user which resulted in violent arguments. He was planning to move out.

Third, a data processor who was referred by her supervisor for poor job performance revealed during counseling she had to care for her grandchildren because her daughter has become a cocaine addict. The daughter goes on "rampages" threatening to kill her and the children. It has become impossible for her to work.

Solution: To achieve a drug-free work place, I am advocating a program integration model for the work place. Human resources is the center and driving force in coordinating the drug policy, EAP, drug testing, security, legal, medical and unions toward the common goal. Companies must educate people to the danger of drugs, as we have done with tobacco.

Recent studies by Cook and Harrell reveal few companies even with health promotion programs stress drug education. The IBM Corporation stands as an outstanding example with a drug and alcohol education program offered to all employees and family members throughout the country. Substantive training programs for mental health professionals who have these programs are needed immediately.

I think this information is going to surprise the committee. It seems unbelievable schools of medicine, social work and psychology rarely today require a course in alcohol or drug addiction. Today there are fewer schools of psychology that require a course in drug addiction than they in 1950. Even the Council on Social Work Education, the accrediting board for schools of social work, does not today require a single course in addiction for the master's and social work candidates.

All managers and supervisors need training in alcohol and drug abuse. We need EAPs that concentrate on reaching drug and alcohol abusing employees early. There must be new funds for meaningful treatment, especially for outpatient programs. At Health and Human Services we funded with Blue Cross the outpatient

model for treating drug addiction at the work site for Federal employees, this was right down the street at 200 Independence Avenue. In the evening, we had treatment programs in operation using EAP offices and conference rooms that were outerwise empty.

Mr. RANGEL. Professor, I hate to interrupt, but in order to make certain that we can hear the entire panel, I am going to ask you to end your testimony here. You will be given ample opportunity to finish the thoughts that you have during questioning.

Dr. MASI. I would sum up to say the work place carries a large part of the burden of drug abuse, and we don't want to see it increased.

Mr. RANGEL. Thank you for your understanding of our problem.

[The prepared statement of Dr. Masi appears on p. 130.]

Mr. RANGEL. On the other side we have Dr. Lawrence Brown, a clinical instructor, Department of Medicine, Harlem Hospital, and also associated with the College of Physicians and Surgeons of Columbia University. We welcome your testimony.

TESTIMONY OF LAWRENCE BROWN, M.D., CLINICAL INSTRUCTOR, DEPARTMENT OF MEDICINE, HARLEM HOSPITAL, SURGEONS OF COLUMBIA UNIVERSITY

Dr. BROWN. Thank you.

Let me offer my sincerest gratitude for the opportunity to be able to talk to you about an issue that you do doubt know affects a large portion of health care providers in the Harlem community.

When I consider discussions of legalization, it seems to me that these are stimulated by two different areas; one, the mounting evidence that the current response of the American society to drug abuse is schamefully inadequate; and the second is a hypothesis that legalization represents a reasonable alternative to the current American response to drug addiction.

Addressing these facts separately, I am going to limit my responses actually to the medical issues, not because of the fact that they are necessarily the most critical issues, although it would be rare to hear a physician say health care is not one of the highest priorities in this country's considerations, but rather because there are probably going to be other individuals addressing non-medical areas more capably than I can.

From the public health perspective, one can either address our policies on drug addiction from the standpoint of a number of people who consume drugs or the consequences that we see as a result of those who use them. Using the first one, I think even though—our colleagues at the National Institute on Drug Abuse are still themselves somewhat stymied by an ability to predict how many people are actually using illicit drugs. In part, this is because data bases are atrophied by the fact they have been underutilized for a number of years.

The other issue, from the standpoint of what we see at Harlem hospital, is a continuing parade of patients who are admitted into our hospitals for cancer, heart disease, meningitis, and kidney failure in association with drug abuse. When we look at the persons admitted for kidney failure, necessitating dialysis, one of the most

common diagnoses is a history of drug abuse. A response directed at legalization does not really address these medical problems that we have in this country.

In fact, epidemiological evidence demonstrates that when a psychotrophic agent is legalized, the incidence and prevalence of medical sequelae (resulting from the use of these agents) increases. This was the case subsequent to the repeal of prohibition regarding alcohol and during the period in which heroin was made legally available in England.

In this country, the current view and approach to drug addiction still seems to be as a stigma rather than the public health problem it truly is. This is evidenced by the structure of our response where drug abuse authorities are outside the framework of public health authorities in New York State and many other States across this country.

Now, if drug abuse is nothing else, it is a clear public health problem that needs to be addressed at least in that framework.

I also would like to, in fact, echo the words of Dr. Masi. I find it ridiculous in this day and age to find that we still have a paucity of formal as well as post-graduate training that involves drug abuse. It should be the role of this country to try and encourage our professional schools, our health professional schools, to include this area in the curriculum and in post graduate training programs.

The other areas that deal with the response to drug abuse is the fact that when we look at treatment facilities, they still continue to be second-class facilities. How can we truly expect to have a reasonable response to drug abuse if what we do is allocate the least attractive facilities for outpatients addicted to these drugs of abuse.

It seems that while there are a number of people talking about the expansion of treatment, I just want to emphasize to the committee from the standpoint of this physician that expansion cannot be just in quantity but has to be also in quality. We have to be able to deliver a full range of services, including primary health care services. It seems to me while we have access to this patient population, we can do a lot more in providing preventive care that has benefits far beyond the drug abuser himself/herself.

One particular example of this is tuberculosis. We have recognized over the last decade that the previously falling trend in the number of cases of TB has reversed. That reversal has occurred concurrently with increase in HIV infection. The same persons likely to have HIV infection are also likely to become afflicted with tuberculosis—persons addicted to illicit drugs.

It seems if we are going to do anything, even in the best interests of persons who do not use drugs, it is important that we make an effective response to deal with all the ramifications of drug abuse. It is particularly important that this country must develop a policy that considers drug abuse in the same vein as it considers other major health problems, such as diabetes, heart disease and hypertension, for truly drug abuse is probably going to be chronic in the lives of these patients addicted.

This means encouragement of health professional schools to add drug addiction to their curriculum and to include public drug abuse authorities within the structure of their public health authorities.

It seems ridiculous that in New York State that we are in that in New York City, and particularly in Harlem, the number of sites for National Health Service Corporations has actually decreased. How are we expected to be able to respond to this growing dilemma? In fact, in Harlem, this has been an issue for a long time.

In closing, these discussions on legalization of drugs provides this country with an excellent opportunity to evaluate the effectiveness of the Federal drug policy. It is my considered opinion these discussions will far exceed their potential if we also use them as the opportunity to reassess Federal drug abuse policies and make bold steps to chart a course that will truly target those factors that promulgate the spread of drug abuse and enhance the ability of health care providers to provide the medical care to persons suffering from the disease of addiction and drug-related complications.

Thank you.

Mr. RANGEL. Thank you.

[The prepared statement of Dr. Lawrence Brown appears on p. 138.]

Mr. RANGEL. David Boaz, CATO Institute.

TESTIMONY OF DAVID BOAZ, CATO INSTITUTE

Mr. BOAZ. Thank you. I would like to thank you and the Select Committee for holding these hearings. It is high time we had a full national debate on the failure of our current drug policy and possible alternatives.

My argument today is very simple. Alcohol didn't cause the high crime rates of the 1920s, Prohibition did. And drugs don't cause today's urban crime rate, drug prohibition does.

What are the effects of prohibition, specifically drug prohibition? The first one is crime. Drug laws drive up the price of drugs and force users to commit crimes to pay for a habit that would be easily affordable if it was legal. Some drug prices might be 100 times higher because of prohibition. Some experts estimate at least half the violent crime in major cities is the result of drug prohibition, and policemen would tell you the same thing if they were free to speak out.

The most dramatic drug-related crimes in our cities, of course, are the bloody shootouts between dealers. These are also a result of the drug laws. We don't see shootouts between rival liquor dealers, but drug dealers have no other way to settle their differences; they have no recourse but violence because they can't go to the courts.

The second effect of prohibition is corruption. Prohibition raises prices, which leads to extraordinary profits, which are an irresistible temptation to policemen, Customs officers and so on. When briefcases full of cash are casually offered to policemen making $35,000 a year, we should be shocked not that there are some Miami policemen on the take, but that there are some Miami policemen not on the take.

The third effect of prohibition, and one that is widely overlooked, is bringing buyers into contact with criminals. If you buy alcohol, because it is legal, you don't have to deal with criminals; but when you buy drugs, you are often dealing with real criminals. One of the strongest arguments for legalization is to divorce the process of

using drugs, especially among young people, from the process of getting involved in this criminal culture.

A fourth effect of prohibition is the creation of stronger drugs. Richard Cowan has identified what he identifies the iron law of prohibition: the more intense the law enforcement, the more potent the drugs will become. Crack, for instance, is almost entirely a product of prohibition. It probably would not exist if drugs had been legal for the last 20 years. Crack is a result of prohibition, not an example of what legalization could mean.

A fifth effect of prohibition is civil liberties abuses. When you try to stop people from voluntarily engaging in a peaceful activity, you are almost certain to run into civil liberties problems in trying to enforce that law.

The sixth effect—I won't say the final effect—of prohibition is futility. The drug war simply isn't working. Some say that much of today's support for legalization is merely a sign of frustration. Well, frustration is a rational response to futility. If a government is involved in a war and it isn't winning, it has two basic choices: One is to escalate, and we have heard proposals to get the military involved, to make massive arrests of users, to strip search tourists returning to the United States, to seize cars and boats on the mere allegation of drug possession.

I think the more sensible response is to decriminalize, to de-escalate, to realize that trying to wage war not on chemical substances but on 23 million Americans is not going to be any more successful than Prohibition was in the 1920s. It is counterproductive. To decriminalize is not to endorse drug use, not to recommend drugs. It is merely to recognize that the cost of this war—billions of taxpayer dollars, runaway crime rates, the creation of criminal institutions, and civil liberties abuses—is too high.

Thank you, Mr. Chairman.

Mr. RANGEL. Thank you.

[The prepared statement of David Boaz appears on p. 144.]

Mr. RANGEL. Mr. Scheuer has to leave.

Mr. SCHEUER. Can I make a unanimous consent request?

Mr. RANGEL. Yes.

Mr. SCHEUER. I would make a unanimous consent request that all members of the committee be—and this is the same unanimous consent request I made yesterday—be enabled to direct further questions at the various witnesses in writing and that the record be held open for perhaps two weeks to enable the witnesses to submit answers. We have an enormous number of highly talented witnesses, and with five minutes per member to address 10 witnesses, it is really impossible to do. I think this hearing has been a marvelous contribution to the discourse, and it would help if we could address individual questions to individual members.

Mr. RANGEL. No objection. I hope the gentleman might consider staying for just five more minutes as we listen to two addicts, or former addicts, rather, Ray and Gloria Whitfield, who have suffered the pains of being addicted to drugs and of having their family affected by it. Not only were they able to find recovery but they have dedicated their lives to helping other people.

So to the Whitfields, you more than any of the witnesses we have had in two days, the basic question is not only for you and your

family but those you are trying to help. Do you see any sense at all in making drugs available to these people?

Mr. WHITFIELD. Only if I am a member of some pharmaceutical company or have a tremendous amount of stock. Other than that, no, I don't.

Mr. RANGEL. You may proceed with your testimony.

TESTIMONY OF GLORIA WHITFIELD, RECOVERED ADDICT

Mr. WHITFIELD. I would like for my wife to start.

Mr. RANGEL. I yield to Mrs. Whitfield.

Mrs. WHITFIELD. Thank you.

Mr. Chairman, members of this committee and interested persons, I am employed with Rehabilitation Services Administration for the District of Columbia in the capacity of Vocational Rehabilitation Specialist. Rehabilitation Services Administration provides services to handicapped and disabled persons in an effort directed towards getting them back into the work force. My office is located in the Drug and Alcohol Abuse Section of Rehabilitation Services.

Drug addiction and alcoholism are considered disabilities under the codes and policies of Rehabilitation Services Administration and persons suffering from such are entitled to certain services. My caseload of clients during a fiscal year sometimes exceeds 200 persons, from referral sources such as ADASA, Halfway Houses around the District, hospitals, RAP, Inc. and other treatment regimes located in D.C.

In addition, I receive walk-in referrals, i.e., persons seeking rehabilitation services on their own initiative. Persons seeking assistance are supposed to be drug free, completed or currently in residential or out-patient treatment and ready for the vocational rehabilitation process. Drug addiction and alcoholism causes unpredictable behavior in individuals, and as a result only a small percentage of my clients successfully complete the rehabilitation process. My training has afforded me the expertise of working with persons suffering from many different types of disabilities. But as a vocational rehabilitation specialist in the drug and alcohol abuse section, I tremble to think what my caseload would be if drugs were legalized.

Our government in America is often accused of fixing things that are not broken and/or enhancing a problem rather than finding a viable solution to eliminate the problem. We all agree that drug abuse is a serious problem in our midst, but how can anyone who has any insight or any perception on drug addiction believe that by legalizing drugs we would solve the problem of drug abuse? Or perhaps I am naive in believing that the problem of drug abuse holds even the slightest interest to those persons who would push for legislation to legalize drugs. Perhaps the main interest is in taking the mega profit out of the sale of illicit drugs. Well, to me that is the same as our government saying, "Hell, I want a piece of that action." Why it would make Uncle Sam the biggest dope pusher of all time. Is that not truly adding to our problem? Think about it.

Drug abuse is killing generations of young Americans by destroying their minds, their motivation to succeed and their will. Addicts are motivated only toward achieving their next high. And drug ad-

diction does not discriminate between my kids or your kids, race or religion, young or old, rich or poor. Families are being destroyed, generations of families are being destroyed and America is being weakened.

Yet America is assisting in its own destruction. Every time we make a deal with or support in any way those countries whose main source of income comes from exporting cocaine or heroin, we are aiding and abetting in self destruction. Legalization of drugs would simply make the demand for their product even more appealing to such countries. Our farmers are catching hell trying to grow tobacco and collard greens, so where are we going to get the poppies and coca plants and cannibis needed to process heroin, cocaine and marijuana? We would have to import. America would suddenly become partners with Noriega in the distribution of drugs, the Golden Triangle would become super powers and all of those other little countries whose gross national product is heroin and cocaine would suddenly have access to nuclear warheads. A gross exaggeration? Not really. Think about it.

Where do we draw the line? Uppers and downers, amphetamines and barbituates can be found in most households' medicine cabinets. Drugs are already legal in this country and fradulent prescriptions are big business. Yet some of our legislators will say, "To hell with it, let's make it even easier for them to drop off, beam up and freak out." But keep in mind those "them" that they are talking about happens to be our future because America's future rests with our young. Legalization of drugs calls for a forecast of a very dim future, it would insure America a future of space cadets that NASA wouldn't touch. Nor would med school, law school, science and technology, aviation or any other institute of higher learning and achievement because drug addicts are detrimental to themselves and to others, and, believe me, I know. Drug addiction is a sickness in which there would not be enough hospitals in America to treat if legalization existed.

Then too, what drugs are we talking about legalizing? Heroin? Cocaine? What about PCP? Maybe a little acid? Where will the line be drawn, and why would it be drawn there? There are many people who fought like hell against the hint of legalizing reefer, yet suddenly the thought of putting the real thing on the market isn't too far fetched. It is really frightening.

Have we seriously looked at the long and short-term ramifications of such a move? First of all, doctors would be in demand like never before even though there is a shortage of doctors, and not to mention nurses, all across this country. Little clinics would spring up like liquor stores on every corner ready to distribute prescriptions for poison. The wino's we see every morning on corners in front of liquor stores waiting for them to open would hold no comparison to the line of dope fiends that would be waiting outside of the little clinics and doctors' offices on any given day. "Hit the pipe" or "Take a fix and call me in the morning" would become a routine response.

Finally, compared to the percentage of our population who abuse drugs, only a small percentage are as fortunate as I am to find the strength to prevail and overcome my addiction and to grow. For

anyone to speak in favor of any legislation which would legalize this deadly poison in a false attempt to control the supply and demand shows a critical lack of perception and insight into the problems of drug abuse.

It further shows an insensitivity equal to those who currently control the flow of drugs into this country. Legalization of drugs would be one more step toward perpetuation of evil influence over the people instead of a more progressive step toward addressing the socioeconomic problems facing the people, such as poverty, lack of education, lack of sufficient health care, lack of adequate housing in poverty-stricken communities which are dumping grounds for drug dealers, all of these things which makes a person eager to escape into the tranquil oblivion of drug abuse: teen pregnancy, child abuse, incest, and, oh, yes, the very rich but very bored, depression, mental illness, mental retardation. I could go on and on.

Not to address these conditions is certainly a sin against mankind, but to add to these problems would be a sin against God because it would be an overt move toward destruction of mankind. Drug abuse weakens the mind and destroys the will of those who fall victim to it. America should wage a real war against drugs using any means necessary to prevent them from entering our ports and crossing our borders. Think about it.

Mr. RANGEL. I have never heard a more eloquent statement.

[The prepared statement of Mrs. Whitfield appears on p. 154.]

Mr. RANGEL. Let us now hear from Richard Karel, Northern Virginia Journalist.

TESTIMONY OF RICHARD KAREL, NORTHERN VIRGINIA JOURNALIST

Mr. KAREL. Thank you, Mr. Chairman.

I was recommended for this hearing following my participation in Mayor Schmoke's drug workshop in August of this year. As a student years back, I tutored inmates in prison for drug offenses to help them receive their high school diplomas. I am very sensitive to these things just discussed.

As a journalist I have covered drug trials, interviewed law enforcement officials, and prosecutors, examined the issue of urine testing and seen the daily impact of substance abuse on a growing suburban community. Although my views have evolved over 15 years of observation, the policy paper submitted to this committee was formulated in direct response to Representative Rangel's tough questions.

In my unabridged paper, which I request of the chairman be entered into the record, I have addressed in great detail regulation, taxation and control of drugs. Let us soberly examine the possibility that a sensible and morally defensible approach to psychoactive substances must focus on legitimate distinctions based on the intrinsic pharmacology of each substance and the application of regulatory and fiscal mechanisms designed to protect the public health.

As Mayor Schmoke so eloquently said, the war on drugs should be led by the Surgeon General, not the Attorney General. I believe I share the goals of Representative Rangel and others and believe sincerely that current policy is highly counterproductive.

Legalization, what Representative Scheuer has called the "L" word, is an emotionally charged word implying for many legitimatization.

My approach, in fact, is not across the board legalization. Indeed, I suggest that the more dangerous forms of illicit drugs remain prohibited to various degrees and that we focus on ways of making legally available less harmful forms of some substances.

I also recommend restrictions on age, advertising and points of distribution and in some instances rationing amounts sold per person within a certain period of time.

In brief, my recommendations are merely a variation on the old theme of using both carrot and stick. The carrot would be legalization of less harmful forms of certain currently illicit drugs in order to draw people away from more harmful substances. The stick would be retention of legal penalities on use or sale of other drugs and forms of drugs.

Whenever the issue of legalizing any of the currently illicit drugs arises, people point with fear to the high cost of alcohol legalization and the supposedly forgotten lesson, that despite crime and violence, public health improved dramatically during prohibition.

There is, however, Mr. Chairman, another even more dimly recalled lesson of the prohibition era, and that is that during the same period we in America were criminalizing alcohol to fight the negative health consquences of abuse, Great Britain was attacking the same problem through a combination of higher taxes, rationing and limited hours of distribution. When the Volstead Act was repealed in America, it did not take long for alcohol abuse to rise once again, and with it alcohol-related health problems, such as cirrhosis of the liver. In Great Britain, on the other hand, alcohol-related health problems declined steadily during our prohibition era and leveled off. They have remained relatively low ever sense.

Interestingly the most recent study on cirrhosis in the United States indicates a steady decline in the last decade. We are not sure exactly why, but speculation centers on the general American trend toward exercise and health. In the United States, we have seen education, labeling, and enforcement of restricted sales of tobacco to minors greatly cut tobacco use and related health problems. No prohibition is necessary, and few think it is advisable. Let us keep this evidence in mind when we consider regulation and control of illicit drugs.

My recommendations are based on the concept of making regulatory distinctions between different drugs and forms of drugs and applying a combination of fiscal and regulatory mechanisms to protect the public health. With prohibition focused on keeping substances such as crack and PCP away from the public, particularly children, and on keeping clinically controlled drugs from being diverted, law enforcement would finally have both a moral justification and a practical focus working in its favor.

I would be happy to provide examples of my specific regulatory approaches to interested members. Thank you.

Mr. RANGEL. Thank you.

[The prepared statement of Richard Karel appears on p. 159.]

Mr. RANGEL. We have been joined by Robert Dornan of California. We welcome your participation.

Let us hear from Paul More, Development Director, the Scott Newman Center.

TESTIMONY OF PAUL MOORE, DEVELOPMENT DIRECTOR, THE SCOTT NEWMAN CENTER

Mr. MOORE. Thank you, Chairman Rangel, committee members, Co-Chairman Gilman.

My name is Paul Moore. I am the Community Liaison for the Scott Newman Center. Since 1980, the center has been dedicated to preventing drug abuse through education. Our efforts include media education and the development of prevention films, school curricula and books aimed at young people and their parents.

Our center's headquarters is in Los Angeles and as an Angeleno, I am intimately aware of how smog affects us. At its most benign it obscures a clear view of reality; at its worst, it is unhealthful and may cause permanent damage to your health, even to the point of death.

The same can be said about the legalization of drugs.

The center is unequivocally opposed to the legalizing of drugs. The more time we spend debating this polluted idea, the more currency we give it, the greater risk we run of permanently damaging our society. Why are we not spending this time in the more constructive task of developing sound prevention, threatment and rehabilitation policies?

The answer, of course, is the topic of legislation is media-glamorous, you aren't going to get this many cameras for a prevention meeting. It makes for a facile, sensationalized discussion on talk shows, in op-ed pages and in news magazines. We as a society seem addicted to the hype of miracle solutions that look good but don't work.

In arguing for the legalization of drugs, proponents mistake effect for cause. In their simplistic world view, crime and official corruption here and abroad seem to have been invented by illegal drugs, and only the magic word "legalization" is needed for these problems to disappear. Do they think the American public just fell off the turnip truck?

Drugs, drug abuse and associated crime are the ugly, visible sores of deeply rooted problems in our society, nation and world. They are the chickens of neglect coming home to roost. Drugs did not invent poverty, broken homes, gangs or unstable, profiteering foreign governments. Drugs did not invent greed, nor latchkey children nor the human desire for a quick fix and easy out. Nor, for that matter, did drugs invent the general breakdown of moral and ethical values.

Without drugs, these problems remain. With legalized drugs, they become more insidious, more intractable, because society will have deemed one more poison legally acceptable.

There is a darker, underlying current in the arguments for legalization—that somehow, if only we would let the ghettoes and barrios have the drugs we assume they want, the druggies won't be breaking into the homes and apartments of the rest of us. We will have "sanitized" the problem. The facts are, of course, that drug use and abuse extend well beyond ghettoes and barrios to suburban

living rooms and back yards, even to the Gold Medal stand of the Olympics.

Not only is such a thought immoral and irresponsible, it accepts real suffering from drug use and abuse as a "cost-effective" trade-off for an imagined decrease in crime. We at the center do not believe in benign neglect.

The center, already deeply concerned about media influences, is horrified at the possibility of sending a whole new set of mixed messages to our young people. Let's be honest with ourselves: drugs already have a glamorous and sexy image. If we legalize them, we won't be able to keep drugs, any more than we have cigarettes and alcohol, out of the hands of our kids. We are not that smart as a government, we are not that smart as a people. If we legalize drugs, our national efforts in the past decade, which have resulted in a measurable effect—decrease in drug consumption and, more importantly, a change in the attitudes of our young people and of people throughout our country—will suddenly be thrown away in one moment.

Ultimately, whether we legalize drugs or not is a litmus test for our society and its values. Will we abdicate our responsibility to our children because the going got tough? We must not. Let us instead get ourselves in gear.

Thank you.

Mr. RANGEL. Thank you.

[The prepared statement of Paul Moore appears on p. 180.]

Mr. RANGEL. Mr. Marvin Miller, member of the Board of Directors, NORML.

TESTIMONY OF MARVIN D. MILLER, MEMBER, BOARD OF DIRECTORS, NORML

Mr. MILLER. Thank you, Mr. Chairman.

I appreciate the intelligent and sanguine effort this committee has made in the last day-and-a-half to try and address this problem. Everybody agrees that drugs are a problem in our society, and crack and heroin addiction are creating tremendous drains on our financial resources.

As you have pointed out repeatedly, Mr. Chairman, and other members of this committee are aware, and as the witnesses have said, there is no funding for the educational and training programs that we so desperately need. And what are we doing with this underground economy? We are letting it run rampant and letting it control the marketplace, letting it control purity. We are treating all drugs the same. They are not all the same, and no one will agree that they are the same. Everyone agrees that they are different.

People say that we need education and training, but the first and foremost approach is to use law enforcement, police, jail cells, arrests, court time. We spend a combined state and Federal budget of $10 billion a year fighting drugs. Of that amount, most of it goes to marijuana possession. Of all drugs, marijuana represents the largest number of arrests, 40 percent. The remainder is spread out among all other drugs combined. Of that 40 percent, 93 percent are for simple marijuana possession. There are 50 million marijuana

smokers in the United States that are criminals simply because of their choice of that substance. Otherwise, they are law abiding, they are productive, they pay taxes.

What we are talking about here is an enormous waging of war on our American population. There are 2800 DEA agents; FBI agents are not included in that number, Customs are not included in that number. Local and State police forces and the local sheriff departments are the prime law enforcement people in this country. We are not a government of national police.

We are a Government where crime is controlled by local States. That is where the biggest war is fought. That is where a lot of money and coordination goes.

What we are doing is having this $10 billion budget with five percent going to education and training. There is no national education program.

There is no national treatment program, as you are aware. There is no money for it either.

The last bill which passed a week or so ago was under-funded. Where is the money going to come from to deal with training, treatment and education? I have a suggestion.

We have put together a bill to make marijuana a regulated, controlled, available substance. As was pointed out by my colleague at this table, Mr. Karel, when alcohol prohibition ended, all the breaks were removed, so the problem increased. In Britain they did not remove the breaks.

They left the breaks on and the problem did not increase to the degree it did here and the problem there is less. Marijuana is a different substance, a benign substance. A DEA administrative law judge ruled that it is the most benign substance known to man.

It is not addictive. It doesn't generate violence. We are talking about change here, dare to question. We, of all countries in the world, have become great because we don't sit on our hands and look at fixed solutions.

We always question and examine and try to look at old ideas and look for new solutions. Let's not march with the Light Brigade, into a march of folly, into a policy that everybody says does not stop drugs on the streets.

Mr. Keating, when asked by Congressman Rangel in December 1987 whether all this had stopped one ounce from hitting the streets, he answered the truth, no, it did not. Let's look at new ways.

We cannot legalize everything but why should 50 million Americans be made criminals? Why can't we take that funding, that tax resource, and raise the level of education?

We will not be a free society if we wage war on the population at home. We cannot continue to give more and more power to law enforcement to the degree that the end justifies the means because once we do we are really in serious trouble.

I ask for you to consider something different. Look at something from a new way and give it serious thought.

Thank you.

[The prepared statement of Mr. Miller appears on p. 183.]

Mr. RANGEL. Thank you.

We welcome Ed Towns from New York, a hard-working member of the select committee. If we can take a break now, let's discuss a proposed schedule.

This is the Department of Defense appropriations budget on the House floor now. I understand Mr. Whitfield has a statement. We will take a break, vote and come back and then the committee will have an opportunity to question.

The Chair hears no objections. We will break until 11:15.

[Recess.]

Mr. RANGEL. When the committee went to recess we were about to hear from Ray Whitfield. Mr. Whitfield.

TESTIMONY OF RAY WHITFIELD

Mr. WHITFIELD. Thank you.

Members of this select committee, I welcome your invitation to testify regarding the proposals to legalize drugs.

As you know, I am an ex-drug abuser and ex-offender, but I ask you to hear my testimony as not only coming from those two life experiences because today, I am also a husband, parent, grandparent, taxpayer, a professional and productive member of the Washington, D.C. community. Hopefully, my testimony will reflect these dimensions as well as my concern about drug abuse.

I am very concerned about drug abuse in all its dimensions, prevention, addiction, treatment and the public and private consequences of this destructive behavior. I will try not to duplicate what my wife has said, but I agree with all of the points she made. And consequently I will support any proposal that works positively to reduce or eliminate drug abuse. But I do not view the legalization of narcotics as one of those positive proposals. This is based on what may be a false assumption that the proposal is made as a measure to reduce drug abuse. Perhaps I am wrong. Come to think of it, I have heard proponents say many things, but I have not heard them say legalize today and be drug free tomorrow.

When I look at one of their proposals, that legalization will reduce the number of drug-related murders, I am not totally convinced. Let me abuse semantics and change drug-related murders to drug-related deaths. When I hear about drug-related murders, I think about shoot-outs in the street with the possibility of innocent people being killed, gangland style executions which are documented and glorified in our movies and history books, with victims left in dark alleys, rundown apartments or secluded wooded areas, with the media there to inform us of the lawlessness which is threatening the very fabric of our lives. This vision is very threatening, scary.

But when I hear drug related deaths, somehow the vision is altered. First of all, the media usually is not there to help us formulate our vision. It just isn't very spectacular and so much easier to ignore. It doesn't threaten us in the same way that drug related murders do, even if the body count is very similar. It doesn't occupy the headlines in the metro sections of newspapers week after week, or provide the obscene pictures on our nightly news broadcasts. And if it isn't reported, it must not be news, therefore,

it doesn't present a problem. At least it doesn't present the kind of problem that demands our attention.

Yes, I am convinced that the number of media worthy drug-related murders would decrease. I am also equally convinced that the number of drug related deaths would be increased. Good health and long life is no more a by-product of heroin, PCP, cocaine and its derivatives than is tobacco and cigarettes.

Obviously, I don't think much of legalizing narcotics, but there is still the question of what shall we do to win this so-called war on drugs. In closing, I would like for us to consider some of the things that I believe have brought all of us together today around the issue of drug abuse.

Perhaps in reviewing them we may be directed toward searching even harder for solutions. Hopelessness, privilege, a twisted sense of values, and duplicity are the things I have in mind.

Hopelessness is the primary reality of one segment of our population.

Some have turned to drug abuse to ease their pain and find escape from a reality they feel ill-equipped to deal with. Others in this same category, without the educational background to compete in our structured society, have used their entrepreneurial skills on the wild side. They are the young local drug sellers who will put me or anyone else in their graves in an attempt to hold onto what they view as their ticket to success. We have nothing to threaten them with. Many of their lives have been worse than anything the criminal justice system has been able to devise. And I would add, probably are able to devise.

Privilege is the primary reality of another segment of our population. Over the last two days I have heard some of those sentiments for privilege. They have turned to drug abuse for recreation. They are confident that the term "dope fiend" doesn't apply to them. They are educated, not deprived in the traditional sense, and do not commit street crimes. Still they don't realize that drugs and recreation are diametrically opposed.

A twisted sense of values is shared by both groups and is partially responsible for their susceptibility to drug abuse. It allows one group to feel they have no choice and the other to feel that they are marching to the tune of a different drummer.

Duplicity describes the way that our governmental agencies and policy makers have dealt with the issue of drug addiction during my lifetime. By that I mean while official governmental policy has not overtly supported drug addiction, many of its policies have contributed to it, i.e., the lack of anti-drug abuse education and addiction treatment facilities in major black ghettos during the 1940s, 1950s, 1960s, plus closing the only two Federal treatment centers in Lexington, Kentucky and Texas.

During that period of time it was not considered a national problem. Minorities and poor whites were mostly addicted to heroin, while middle and upper income whites were still dealing with the myth of cocaine suiting their lifestyle and it not being addictive. Over the last two days I still hear people say they are not certain of the addictive qualities of cocaine. Drug addiction did not become a public problem until it reached suburbia in the late sixties and early seventies. That is duplicity. It is also duplicity if our govern-

ment policy requires us to support drug dealers in the fraudulent name of fighting communism, or stopping drug related deaths. A twisted sense of values can only create havoc and confusion.

As a drug abuse consultant, I continually meet youngsters from a variety of environments. The common denominator among them is drug abuse with one or more of the things I have mentioned as a contributing factor.

If nothing else, I sincerely hope that these hearings illustrate very forcefully that drug abuse is not the root problem. Drug abuse is a very destructive symptom indicating a number of other problems.

If this is not recognized, we may be doomed to continually treating symptoms in the form of drug abuse, or other behaviors that are equally destructive. I hope my testimony will help to move the issue of drug abuse prevention beyond dialogue toward accomplishment.

Thank you.

[The prepared statement of Mr. Whitfield appears on p. 226.]

Mr. RANGEL. Thank you.

Now, the members will be recognized to inquire.

For those who talk about legalizing marijuana, are any of you familiar with a report issued last June by the Maryland Institute for Emergency Medical Services in Baltimore where the nine-month study indicated that 1,023 patients out of that study, 34.7 percent, were found to have used marijuana within four hours of admission to the center?

They attributed the direct relationship to the use of marijuana and automobile accidents.

Mr. MILLER. I am familiar with it and I appreciate your bringing that forward, because it makes my point.

In uncontrolled, illegal substances, you have no control over potency. If you drink a glass of beer with a sandwich and only have one and two hours later get in your car, you are going to know what the beer will do to you.

If you have an uncontrolled market place, you have no idea what the marijuana cigarette will do to you. If you control the potency, you will have no problems like that.

If you took just ten percent of the money used to criminalize marijuana, you could make films like those that were shown to the soldiers in World War II to warn them of some activities involved in World War II.

Mr. RANGEL. Do you believe if the marijuana cigarettes were manufactured by the cigarette manufacturers, do you think that it would be dangerous?

Mr. MILLER. No. I think the purity and potency can be controlled and regulated. If we separate marijuana from the hard drugs and tell our people the truth, then they will listen to us.

Mr. RANGEL. You are saying it would be no different than cigarettes if it was controlled, regulated and legalized?

Mr. MILLER. It would not be any more dangerous than the subsidized tobacco market and in some ways less dangerous than the alcohol market.

Mr. RANGEL. You would then suggest that we treat marijuana basically the same way we treat cigarettes?

Mr. MILLER. I would have no advertising, no vending machines, not even posters in the stores, no advertising in magazines, newspapers or T.V. You would have that kind of ban.

Mr. RANGEL. The private sector would produce it and they would not be able to compete as to which marijuana cigarette was better than the other.

Mr. Miller. It could be done without advertising. In the Commonwealth of Virginia, as in other jurisdictions, alcohol is marketed in stores with no advertising in the stores. We could ban it effectively in a regulatory mode and as the bill we provided a few moments ago states, there would be no advertising of any type.

Mr. RANGEL. How would a smoker know which manufacturer was offering the best quality of marijuana?

Would it be just word of mouth? How would you know which brand name to buy, You would expect that one can get high off these cigarettes, right?

Mr. MILLER. Yes, but I think the consumer would rather have the problem in his life of saying, "Is this better than that?", than have the problem that, "I smoke marijuana, which means that I was afraid to call the police when my house was burglarized."

Mr. RANGEL. In talking about legalization, you don't want the manufacturers to compete, the marijuana manufacturers, but still the consumer would want to know which reefer is better than the next one being manufactured.

Mr. MILLER. The consumer may want that, and let them do market testing in the way they do in the market place today.

Mr. RANGEL. Please don't talk too fast, I can't understand you.

Mr. MILLER. The marketing device in our market society on facial soaps is one person recommending it to another. I don't think that is a problem.

Mr. RANGEL. So you suggest that the cigarette companies could get into the manufacturing but you would ban them from advertising their products to the consumer?

Mr. MILLER. No advertising and no displays and a very controlled, regulated market.

Mr. KAREL. May I respond?

Mr. RANGEL. Do you agree?

Mr. KAREL. In some aspects. In the shock trauma study, I am familiar with that, it is an example of something else. The headline in the Washington Post said 34.7 percent of patients used marijuana. If you did a statistical analysis, you would find something in the range of 18 percent of the people tested positive for marijuana alone.

The other people had consumed alcohol. In one of the most infamous disasters, the Conrail disaster, the headline in the Post blared that marijuana was involved. However, Ricky Gates also said he had consumed alcoholic beverages. He also had a DWI conviction.

Mr. RANGEL. The problem is that when you have lost a loved one as a result of marijuana, alcohol or cocaine or heroin, no one gives a darn what the cause is.

I don't see how you can use that as a legitimacy for marijuana. Use is abuse.

The fact that we have made one-million-and-one mistakes in the distribution of alcohol, to me, is not an excuse to do the very same thing with other drugs.

Mr. KAREL. It is not an excuse.

Mr. RANGEL. Would it have made any difference if they said this engineer that drove this train was drinking too much beer? Would that make anyone feel better?

Mr. KAREL. Representative Rangel, I have tremendous respect for the work you have done and I would not say that if I did not believe it. No one advocates that it is okay.

Mr. RANGEL. Would you make your point again?

Mr. KAREL. Whenever you look at statistics, for example, that 34.7 percent of the trauma patients used marijuana, the statistics show alcohol was the primary drug. Perhaps an old baseball story will help me make my point. Babe Ruth, during a 7th inning break, went back to the locker-room, ate 12 hot dogs, 13 pastrami sandwiches, drank half a gallon of Orange juice, ate an apple and then he threw up. The coach came over and said, what is the problem? He said, I should not have eaten that apple.

When a person has consumed a lot of alcohol and then smokes a joint, you cannot say the marijuana is casual. People should be prevented from driving while impaired for any reason.

I do not think you have done this, but other politicians have demagogued the issue of marijuana and driving.

All I would like is a rational, sober debate to look at facts, to try to make distinctions based on pharmacological differences, to not talk about a universal drug problem, to not look at the drug user as an outcast—and I agree with Mr. Whitfield on this—to take away the stigma, try to look at people.

You know people talk in one breath about compassion and treatment and in the next about locking more people up. There is not a person here today or yesterday who doesn't believe in the compassionate treatment of people with drug problems and we need more treatment.

I find a dichotomy between that and legal persecution of users. We are not talking about selling crack to children on playgrounds.

We are talking about draconian penalties. Are we making things worse or better? If I didn't believe that the scenario that I suggested stands a possibility of accomplishing the goals that you, Representative Rangel, want to accomplish and Mr. Dornan and the other people who have sat on this panel for the last two days, I would not make those recommendations.

I believe that there are possible ways of looking at the problem and helping, of lessening the number of kids exposed to harmful drugs, of reducing the problems. I don't accept implied assumption that things will get worse.

I don't accept that if X number of people are using a substance, use, per se, is abuse. Where do we hear that distinction between use and abuse?

Semantics are not trivial in this debate. As a politician you are far too sophisticated to not recognize the importance of semantics and distinctions and labels.

Mr. RANGEL. I will tell you one thing, an addict is an addict. I don't see people talking about giving alcohol to people with the

same weight that I see them talking about giving access to heroin and crack to addicts.

Mr. KAREL. My father was a research pharmacologist. That is a little of my background and I am familiar with the pharmacological issues. Alcohol is different.

If you have an opportunity to talk to Dr. Musto, you might ask him about this: one of the very legitimate uses of morphine in Kentucky by many responsible medical authorities was to substitute morphine for alcohol use in chronic alcoholics, an utterly astonishing concept today to most people. Why did they do it? Because morphine addiction, and this is what they were doing, addicting alcoholics to morphine, arrested result degenerative cirrhosis of the liver and did not result in the disruptive behaviors associated with alcoholism.

Mr. RANGEL. The addiction of people in my district to methadone is a heavier addiction than heroin. There is no limit as to what we should do. To try and stop it.

Mr. Guarini.

Mr. GUARINI. As I understand it, you made a hot dog, pastrami and apple analogy. Yet the Maryland Shock Trauma Center showed of the thousand-plus patients studied, about 35 percent were found to have used marijuana within four hours and 33.5 percent were found to have used alcohol, but 60 percent used both.

So there were more using marijuana than alcohol.

Mr. MILLER. Which shows that prohibition is not working. If you lump them together and talk about marijuana, it is automatically slipped into heroin and cocaine, and marijuana is not addictive.

Mr. GUARINI. Something goes on in their minds psychologically and there is a rearrangement of behavior if they have marijuana.

Mr. MILLER. I accept that, but if we can control the potency by bringing it out of the dark alleyways and into the light, if we can start being honest to people about what these substances do and have them listen because we are not lumping them together.

Education works in this country; coercion does not.

Mr. GUARINI. Studies show a correlation between people who begin on marijuana and go on to harder substances. If you are going to accept that fact.

Mr. MILLER. No. Surgeon General Koop's recent report showed the biggest gateway drug is that which is subsidized by the United States, tobacco.

Mr. GUARINI. Let's not talk about tobacco. That is a whole different bag. It is not a fair analogy. Let's talk about the pharmacology and the truth about marijuana. The fact is when you start with marijuana, people want more of a kick and they don't get it out of marijuana and they then go on to cocaine, crack, heroin, PCP and all these other things.

Am I correct?

Mr. MILLER. I don't think that is correct because you do not have a larger cocaine, crack, and heroin problem in Alaska than you do in New York where marijuana is available. The same is true for Oregon and other jurisdictions.

Mr. GUARINI. Is our research that we know of, all the differences in the use, treatment and addition of all the different kinds of drugs that are used, is there still perhaps, Dr. Boaz—Professor

Masi, perhaps you might be able to help us in this. Is there still a lot we don't know about all these drugs and the addiction attendant to those drugs? Are we still—is there a lot of research that has to be done before we can make definitive decisions?

Dr. MASI. First of all, I will qualify my statement by saying I am not a medical doctor, but I think I can answer this question. I think that NIDA has made tremendous strides in informing us about the drugs, and we do know a fair amount. We used to think, and I think you heard the testimony yesterday, about 10 to 15 years ago some of these drugs we thought were a lot less harmful than we realize today. I think we have a lot more information at our disposal and are finding out far more the dangerous effects of all of the drugs, including alcohol as well as tobacco, marijuana, cocaine, heroin.

Mr. GUARINI. But we are still in the position of having to get more facts to base sound decisions on?

Dr. MASI. Yes and no. I think we are learning a lot. I think more research is needed—I certainly would support more research in this particular area, but I also would support the need for training, education and treatment. I think there are the areas we really need the funding.

Mr. GUARINI. You don't support legalization of marijuana, do you?

Dr. MASI. No.

Mr. GUARINI. Why?

Dr. MASI. Why do I not?

Mr. GUARINI. Yes.

Dr. MASI. I think, for example, I see marijuana leading to other drugs and more addiction, which I am opposed to.

Mr. GUARINI. Let me ask one further question, if I can maintain just another line. The private sector you spoke of in the work place, do you feel the corporations of America are doing enough, could more be done? Is there a great loss of productivity which hurts our national economy which is not talked about very much, and that also affects our national defense because our military potential is reduced?

Dr. MASI. There is a tremendous cost to industry in the area I mentioned, productivity. A wide variety of ways are being effected in the workplace by drugs. We have to remember though that the primary drug of abuse in the work place clearly above all others is alcohol. However, I do think American industry is waking up. I think it has taken a while, but I think they are becoming more and more sensitive to the problems in the work place.

However, they don't know what to do. They are going into EAP programs, drug testing programs. As I work with companies, I am a social worker, working with companies day after day, and I say it is really tough for them, that is not their business. They are not in the business, for example, they are in another business producing another kind of product, and here they are suddenly thrust into drug prevention. So they are looking to the experts, asking what do we do? What can we do? But they know darn well they have a problem.

Mr. GUARINI. They should have a social conscience, not just an economic conscience, and they should be expected to pick up the cudgel and do more.

Dr. MASI. In no way do I want to give you the feeling their only concern is the bottom line. Industry knows the two go together. When you invest in people, you are saving money, and people are the more valuable resource. They know that, and they are investing and trying to find out what to do. But it is a major effort throughout the whole country, what do we really do? I think the most important thing about the work place that I hope came across is most drug abusers today are 40 years of age and under, they are not necessarily just the youth, just the kids, and I think it is a major mistake to emphasize all our Federal programs in only the direction of the young people, because actually the age group has literally moved up. So most drug abusers are literally working and are in the work place, and the work place is very aware of that.

Mr. GUARINI. I think it is very fortunate they do understand the problem, and I would like to see Corporate America become even more deeply involved in solving some of our social problems.

Dr. MASI. I agree. There are still some out there not as aware. I am on the National Security Institute Board of Advisors for Defense Contractors, and I think the idea of our Secretary of Defense saying, for example, that all defense contractors should have EAP programs is very good, because you shouldn't have drug testing without the EAP programs. That is a major mistake, just to have the testing. We really need the employee assistance programs.

However, there are problems on the other side with the employee assistance programs who are not necessarily reaching the numbers of alcohol and drug people in the work place that we need to, and that is an area we need to work on for the work place.

Mr. GUARINI. Thank you.

Mr. BOAZ. Could I address this?

The Congressman was asking about drug abuse in the work place and lost productivity. The most abused drug in the work place, which causes the most lost productivity, is alcohol. I would point out we don't conclude from that, therefore, we should criminalize alcohol.

Mr. RANGEL. You are opening up another door, and you might get some people to take a look at that too. I don't think you are making your argument by saying that because people are not critical of tobacco and alcohol that we should be more flexible on the question of marijuana.

Dr. MASI. Could I comment?

I don't want my statement to be read in fact because the primary drug of abuse in the work place is alcohol, this means we should, for example, consider or legalize the others. That is not what I mean at all.

Mr. RANGEL. Nobody got that impression on this side of the table.

Mr. Coughlin.

Mr. COUGHLIN. Could I yield briefly to Mr. Shaw on the question?

Mr. SHAW. I would like to drive home a point. I am tired of people making this analogy. The reason alcohol is the primary abused drug is because it is legal. That is why.

Mr. MILLER. There is an interesting point, however, Congressman, and that is alcohol use, hard alcohol, liquor, is on the wane, and it is on the wane not because people are criminalized who use it, we didn't even criminalize users in prohibition in the 1920s, it is on the wane because American people respond to education and not coercion, and they are beginning to learn that it is not good for you. People don't eat red meat as much as they used to or fried food as much as they used to; tobacco use is down. The tobacco industry is going abroad to make its market bigger. Why? Education, not the coercion of jail cells.

Mr. COUGHLIN. Let me reclaim my time.

Mr. KAREL. There are other ways of trying to also influence behavior in addition to education and prohibition. That is the reason this comes up. You are tired of hearing that, I get tired of people saying even though there was Al Capone in the street, the rate of cirrhosis was down. I say, yes, but look what was going on in Great Britain at the time where the rate of cirrhosis declined, matched ours and instead of making our mistake, when we repealed the Volstead Act, when all of a sudden we had advertising and Spuds McKenzie and so forth, they were able to keep their rate down. I think everyone shares the goal that we want to see less abuse. We don't want to see problems in the work place.

The question is: Is this what we are accomplishing? I sometimes get a feeling people are talking as if what they are doing is making things better through current policies, and I don't believe that. I am not sure that the legality of alcohol per se is why we have the worst problem, but I have strong feelings that advertising Spuds McKenzie, you turn on the national football league, and what do you see?—does encourage alcohol abuse. Budweiser commercials. That is so accepted. Do you question that? I don't most of the time.

Recently I have, and I said, gosh, why am I watching this beer ad on television when alcohol causes 125,000 deaths a year. I agree with Professor Masi, that our current alcohol policy is not an argument for modeling regulations of other drugs on it, but what it shows is maybe we are not looking at things clearly. There is not a lot of clarity. That is all.

Mr. RANGEL. Mr. Coughlin.

Mr. COUGHLIN. As far as you know is there any way of estimating how many additional addicts we would have if we legalized these substances, in view of the fact that they would be more plentiful and less costly?

Mr. MILLER. There is some information that indicates the availability of marijuana in the relaxed era of the 1970s—someone said yesterday overall marijuana use was up. It was up, but not in the areas where availability was relaxed. There is also some indication from the Dutch model that people would rather go to a legal drug like marijuana, which is available over there, than to some of the harder drugs and that it sort of stops people from going that little step further.

There is a need for more data, and I am not saying it is conclusive. The indications are, however, that the availability of that one drug, marijuana, does not increase use. There is indication that it does not lead people to go to harder drugs if they are not made available, legally that is. And I think that one of the reasons why,

and I hope this is one of the perceptions that Chairman Rangel had in saying that he needed more hearings, is that we need to examine issues like that. We haven't been examining them. The NIDA report was in 1980 or 1981, they have issued nothing since then.

Mr. COUGHLIN. Is there any way of estimating how many additional injuries would result due to automobile and railroad accidents if we legalize these substances?

Mr. KAREL. I was talking to Peter Reuter, senior economist for the Rand Corporation—his name may be familiar to some of you on the panel. We were talking about the upcoming debates and so forth. He mentioned to me one very important statistic, involving the use of marijuana by the high school age group, and he pointed out 88 percent of the kids said they could get marijuana. In Mr. Reuter's opinion, and incidentally he hasn't come out one way or another on legalization, he does not believe, at least as far as the economics go, legalization would make a great deal of difference in terms of availability.

I am not suggesting, Mr. Mitchell isn't, that we do put marijuana or cocaine on the supermarket shelves. I think most people recognize there are significant risks there. I looked at one study done based on an alcohol abuse model in terms of the development of marijuana dependence, and it showed beteeen five and nine percent, even with marijuana, do develop some degree of psychological dependence, whether or not you call it addiction is not important. Based on a population now of approximately 20 million marijuana users, you can extrapolate what five percent of that would be.

Mr. COUGHLIN. Are you taking the position there would be no increase in accidents if you legalized——

Mr. KAREL. I am not sure that many more people would be using marijuana in a harmful way. I will say one thing. I think whatever is done in any degree needs to be followed carefully in terms of longitudinal research. It simply isn't true once you do something there is no turning back. Things need to be done carefully, slowly, they need to be monitored. You want to exercise damage control.

I really sincerely believe, and I know how wrong Representative Rangel thinks I am and other are, that the people I have spoken to who are on my side of the issue feel that we are trying to make things better. I know you all don't agree with that.

Dr. MASI. I think what we have to look at is the primary drugs of abuse today are the legal drugs: alcohol, tobacco and prescription drugs which we haven't addressed too much today.

Mr. COUGHLIN. The question I am asking is if you legalize these substances, would there be an increase in addiction and accidents resulting from drug use?

Dr. MASI. I think we heard from our first speaker this morning who talked about the experience in England and what happened there, and I think also the fact that the tremendous numbers of people using the legal drugs will tell us if we legalize more drugs, we certainly are going to have more abusers. It follows logically. One of the reasons there is less use of marijuana by the teenagers today, the NIDA survey also showed, there is some concern about the fact that there are restrictions and the fact that there are laws about it.

So what they are doing is switching to the legal drug, they are switching to alcohol. There is an increase in alcohol, that is the other side of it, as they are decreasing in marijuana.

Mr. MOORE. Congressman, we at the Scott Newman Center have long been opposed to media advertising of alcohol on television, et cetera. I mean we are not very good fans of Spud McKenzie or any of the other party animals. So in that sense, we need to be doing something directly about alcohol in terms of advertising on media.

I think when you start talking about marijuana and you start talking about the legalization of marijuana, I think this is a Trojan horse, and this is an argument which misses the very basic nature of what marijuana is, which is that it is a highly social drug which is shared among people. And in doing so, what you are looking at is what has happened in our society I think over the last 10, 15, 20 years. You know, the great growth in marijuana use occurred becuase of the counter-culture, because of the fact we were mired in the middle of the Vietnam War, et cetera. This was a very distinct cultural period in which many people started using marijuana, you know. And anyone who ever used marijuana in those groups that used them, it was not "I am going to take a cigarette and it has one dose, I am going to take this marijuana cigarette and say, last week I had some Thai stick, it was a lot better than that, it was 10 times the dosage, it was a lot stronger, I got a lot higher." The demand is to get higher and higher.

That is something that is missed by the people advocating the legalization of marijuana and a very basic point. They want a higher high. I mean, that is part of the drug. It is not a cigarette which you smoke privately and a few minutes later you have a reacton in your nervous system.

Mr. RANGEL. Mr. Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman.

Let me begin by first asking you, Mr. Miller, do you feel we have a war on drugs?

Mr. MILLER. Congressman Towns, we are in a war on drugs, and we are waging it on our own people. We now have an enormous amount of people that are going to jail and that number is on its way up. We spend $10 billion a year on it. We have it as the biggest law enforcement priority in the United States. We have tens of thousands of law enforcement officers, not the DEA, but the real front-line troops which are the police, the detectives and vice units all across America. They are interlocked with interlocking computer information networks.

We do have a war, but as has been said by Mr. Keating, as head of DEA, he said the other day:

> We are not keeping one ounce less off the street. We can't keep it from coming in, you can't even keep it out of the prisons where people are searched all the time, they have checks where they go in and go out, even with their vistor strip checks and everything else.

Yes, we have a war, the war is not working. We need to look at different ways to approach it.

Mr. TOWNS. When you say you have a war, I must admit that I disagree with you. I think at best we have a skirmish—at best. When you talk about a war, you would have to talk about education and prevention, I think you have to talk about treatment, I

think you would have to talk about strong addiction programs, Crop substitution, et cetera, if you are talking about a war.

You only mentioned one aspect in terms of law enforcement, and I am wondering based on that if your proposal is not coming out of frustration.

Mr. MILLER. It is frustration in that marijuana has become—it was introduced, as my colleague said a moment ago, during the War era as a more prevalent part of our culture, but it has become part of our culture, and my frustration is that the 50 million users are criminals. Other than that, they are not in any way law breaking individuals.

A Texas Senator did a report for the Texas Legislature recently looking at how much they spend on marijuana users only and looked at the cost that they have for that program of theirs. And he determined that on a cost/benefit analysis, shall we say, that they weren't getting much for what they were doing. They were spending about $3600 on each defendant. There were one in every 10 people who used it, and what was happening is lives were being hurt more by criminalization in this particular substance than by the use itself.

Yes, I am frustrated because I think things need to be differentiated. I am frustrated when I taught at Cordoza High School about 18 years ago, a school near here in the inner city, when I was doing education to young people about drugs, and everybody else was treating them all the same, and I was saying, no, they are not all the same, I am not going to lie to you. I was having good success because I wasn't lying. I wasn't showing a scrambled egg and saying, this is marijuana, heroin, cocaine, they are all the same. That is not true. Kids don't believe it. Everybody says it.

As soon as you start talking about marijuana, I start talking about it in a situation like this, people slide into cocaine and so on. They are not the same. Let's tell them the truth. Let's separate it, let's make it available and not make these people criminals any more.

Mr. TOWNS. Let me tell you my problem with it. First of all, you use an analogy, one beer and a sandwich. You don't get drunk from one glass of beer with a sandwich. It just doesn't happen.

The only reason one smokes marijuana, no matter how controlled, how regulated or who regulates it, is to get high.

Mr. MILLER. But people get high at different degrees, and if they know what they are doing with it, which is something that can be achieved by education, then they can do this, and most people do it in the privacy of their own homes and aren't bothering anyone else. We are in a society where we have people high on marijuana running around, and it is as available as alcohol to the population, that is the working population—and it is as available as alcohol to the kids because 88 percent report it is available to them if they want it. We don't have them out there causing the trouble. It is not the biggest industry problem. The legal drugs are the biggest industry problem, and that is because marijuana users, to a certain degree, have a greater sense of responsibility.

What I am advocating here is not that we sanction use. I advocate that we sanction reasoned education, that we sanction and changes our course and tell people you have to look at this in a

reasoned way, that we do the studies to understand what is the correlation between these things, which we don't really have in sufficient number right now, thought the most recent one—the Surgeon General seems to indicate I am correct on this—let's do more of that, and let's not in the process make these people criminals. We didn't make the wine drinkers doing kiddush on Friday night in prohibition criminals because they drank a cup of wine. We shouldn't do that to the marijuana smoker today.

Mr. GUARINI. I want to change the focus to Mrs. Whitfield.

You have an opinion about this, you have been through it all——

Mr. TOWNS. One second. I got a question of Mrs. Whitfield too. I have a point here I want to finish.

Doesn't this bother you, first of all, that 95 percent of people that are on hard drugs, heroin, you name it, 95 percent studied by Rockefeller University some years ago indicated these people smoked marijuana first?

Mr. MILLER. That bothers me except for one thing, they also probably drank milk, and the most recent study on that says the largest gateway drug is not marijuana but is tobacco.

Mr. MOORE. That simply is not an excuse for legalization.

Mr. MILLER. What I am saying is that it is not excuse for criminalization, the people that use and do not go on to harder drugs, which are 50 million, do not and should not be criminalized for that reason, and that is the reason not to criminalize it.

Mr. TOWNS. Let me ask you this question, and I am going to let you go. I will let you deal with my colleague.

Doesn't it bother you—if that doesn't bother you, let me ask you this. Does this bother you, the fact there is no exaddicts calling for the legalization? Doesn't that bother you?

Mr. MILLER. No, I would not say that, because I do know ex-addicts who call for legalization.

Mr. TOWNS. Why don't you get them to come before this committee?

Mr. MILLER. I think that marijuana is considered different, by ex-addicts, than other drugs, and I think—and I deal with ex-addicts in my private life all the time and current addicts in my current life all the time, and I deal with people in treatment all the time, that they have an agenda they have to deal with, that they are trying to achieve, and I do not have people that are of that view that are here today to address you. But they are out there. They are out there.

There are people, for example, that know individuals who are involved in heavy cocaine and crack use who, when they get off, would rather have them smoke marijuana than do alcohol. When I was in the Army, there was a General who called a committee together of officers: "Would you rather have your men smoke a joint at night, get up and be clear headed and go about their duties than get bombed on a couple gallons of tanqueray and get up and say, "Oh, man, sergeant, I am really bad this morning"? And the consensus was—I don't know any report was ever issued by that general, I don't remember his name.

Mr. RANGEL. There is no report. We would have read it.

Mr. MILLER. I am sure. This was in 1970. I am dating myself now. But the consensus of the young officers in that meeting,

which was informal, was that there is a more beneficial situation to the man in the morning if he smoked that joint at night than if he drank that gallon of booze, and some men were line officers who were back from Nam, some men were officers who were training and yet to go, and some people had a whole variety of experience.

Mr. RANGEL. I am going to have to yield to Mr. Shaw, but I am certain that the same argument could be made for crack as opposed to heroin use.

Mr. MILLER. I don't think so.

Mr. WHITFIELD. May I say something as an ex-addict concerning this whole thing about reefer. I am definitely not here to support legalization of reefer, per se, but I am not taking any opinion about it. But I do feel that in talking about the legalization of marijuana for such an extensive time that we are missing the boat on some things that I really consider to be very, very dangerous, and I am one of those people that have been through the whole thing, I am in agreement with a lot of things they are saying concerning marijuana, but I think to talk about the legalization of marijuana, we are missing the boat on crack, we are missing the boat on cocaine, we are missing the boat on heroin, and I have never seen any one OD on reefer. I have OD'ed many times, but not from marijuana. Why do we keep messing with marijuana? We are talking about legalization of killers.

Mr. RANGEL. Mr. Whitfield, we will be getting back on track. Because marijuana is listed as an illegal drug, naturally when the chair asks these people to come and testify, they were invited, among others. But one of the reasons why, I would gather, I and other members of the panel have not questioned you is, one, because they agree with the testimony that you have given, but, two, because I have some very pointed questions to deal with the problems that you two have recognized individually and collectively and see for my community and country. Don't think I am passing over you.

Mr. WHITFIELD. I felt sort of bad that marijuana was getting such a large bit of attention when I see it as a small piece of the problem.

Mr. RANGEL. They have a more sophisticated group of supporters.

Mr. MILLER. We also have a larger share of the prohibition budget. Maybe it would be worthwhile to take a larger share of that budget and put it where it belongs, where Mr. Whitfield suggests, instead of prosecuting and persecuting marijuana users, take that budget and put it where it can go to better use.

Mr. SHAW. I find it interesting Mr. Miller would have compared one marijuana cigarette to consuming a gallon of gin. I would suggest that person who consumed a gallon of gin would not show up for work the next day.

The use of illegal drugs is well documented, well documented in my home district of Fort Lauderdale, Florida, at the Broward General Hospital as causing heart attacks, causing strokes, causing permanent brain damage. You know who I am talking about? I am talking about the premature babies dying and going through withdrawal at Broward General Hospital.

Don't tell me that what you do in the privacy of your own home doesn't hurt anybody. It does. I am sorry Dr. Brown is not here because the chairman has shared stories in his own district similar to what he saw when he came down for a hearing in Fort Lauderdale, and that is the damage it is doing to the unborn, the pregnant woman not knowing she is pregnant in the earliest stages of pregnancy still consuming cocaine and destroying the baby that is within her. That is one of the most intolerable sins of this generation I can ever see, and that is one of the prime reasons I feel it is so important we not under any consideration concern ourselves with the legalization of these drugs.

And the parallels that I see that are drawn between this and smoking and this and drinking and trying to throw this committee on the defensive to defend smoking and drinking, which it is not doing, I think is really begging the question and shows how desperate that you are to come up with an argument for legalization.

You point to another substance that we know maims and kills and saying if you do this, why not do ours too?

Mr. KAREL. I don't think——

Mr. MILLER. That is not our position.

Mr. KAREL. I don't think that is the position. Again, I feel we should be allies, not opponents, that we are taking different paths to similar goals, which is reducing neonatal use of drugs and other problems.

Mr. SHAW. To me to say we should legalize that would be to use the analogy firecrackers are legal, so let's legalize dynamite.

Mr. KAREL. I understand the sentiments, I do understand the sentiments, and I am researching a book, and I am familiar and I talk to people who deal wth research on the neonatal effects of drugs, particularly cocaine, and there is evidence which is becoming stronger and stronger that cocaine use is damaging to the fetus and does mimic the fetal alcohol syndrome, and I do not think that pointing to alcohol or tobacco is a way of legitimatizing the use of other drugs.

I think the problem is when the emotions start to supplant a careful look at different drugs, different modes of use, when marijuana starts being confused with free-base cocaine or granular cocaine, when cocaine is confused with coca leaf—has anybody talked about how that is used and whether that has detrimental effects on users of coca leaf in Peru? This sounds like an obscure argument.

I simply think it is important. I do not want to lock horns with the good Congressman or with any of the other representatives up there. Again, I sincerely believe that we have to try to look at this rationally. I do disagree with my colleague that what you do in the privacy of your home does not have negative effects, and I agree with you in that regard. I think it is very important. I do think we have to protect the unborn, particularly from all kinds of drug use, and one does not justify the other.

But what I see now is because of the legitimate concerns we don't take a deep breath and say, are we making this worse or better, how can we do this, what is the best way to do it?

Dr. MILLER. I join you in your concern. NORML does not stand for legalization of all drugs. It never has. That is not our position. Our position is let's look at this in a rational way, separate them

where they need separating. There is, as you have heard through these hearings, a divergence of opinions on things. That is a good reason why having a commission to study it and trying to get an intelligent, empirical consensus is a viable idea. We need to help our society, we need to improve the quality of life for our citizens, and one of the ways we believe that that can be achieved is not to criminalize people that are marijuana users and let's separate them from the cocaine market and the heroin market, and let's have a more intelligent policy about alcohol and tobacco. They are harmful, and we are not advocating their use or encouraging their use. We are not advocating encouragement of the use of marijuana.

We are advocating an examination and a real careful, thorough study, because it seems that the empirical data coming down the pike these days is changing some old assumptions and is finding some new things to be looked at in different ways, and that is what we are asking to be done, and I don't think our citizens could be harmed by that, and I think we could all benefit from it.

I join you in your concerns, and I think they are absolutely legitimate, and one of the reasons we are here is to try and help promote those concerns.

Mr. SHAW. I would only conclude here with a short few sentences with regard to what effect these illegal drugs are having on our society, the effect it is having upon the life and future of those that use them. For us to open up these flood gates with the legalization of any of these drugs would be one of the greatest mistakes I think this government could do, and I would respectfully suggest that it is my opinion that this Congress or none of the future Congresses will ever legalize marijuana, cocaine or heroin.

Dr. MASI. I think Congressman Towns' question about, "Are we waging a war on drugs?" is very important. I would even say we are not even waging a skirmish. If we had gone all out for drug education and treatment, all the kinds of positive programs that drug health people are asking for, then we might want to say we might want to open up questions. But at this point, to jump to legalization, we have no way near put our national efforts into things we know can succeed, like beginning with tobacco as far as education.

The problem is that these are not hype words. We need good education, training and treatment. These are the things I would hope the Congress would give some attention to. We need this badly. We need funds for treatment. We need funds for training people out there in the trenches day after day working with the persons affected by the drugs.

Mr. SHAW. Doctor, to quote a great American, we have not yet begun to fight.

Dr. MASI. That is right.

Mr. SHAW. We will not be able to take credit for a war against drugs until we bring the war into the fields where the marijuana, cocaine and poppies are grown. It is nonsense to think we can solve the problem of illegal drugs coming into our country without taking that last step.

I believe the efforts we have done with regard to the interception of drugs over the ocean and through the years as it comes into this country are about as good as we are going to be able to achieve,

even if we were going to be able to substantially increase the budgets. We have to look at ways to fight drugs which is hopefully in the countries where they are grown, hopefully with full cooperation with the United Nations but particularly the host countries.

I believe the drugs grown in those fields are a greater threat to the future of this country than all the Russian missiles. If we can go in and take out Soviet landing strips in Grenada, I believe we can go in and take out the crops that are hurting our children.

Mr. RANGEL. The Chair at this time would like to recognize Mr. Guarini. In view of the fact that we have to vacate this room by 2:00, we will work straight through the lunch hour.

Mr. GUARINI. Much has been said to separate marijuana from the other drugs.

Mrs. Whitfield, you recovered from drug addiction. You have been in the trenches and you are fighting the problem now as hard as you can.

Mrs. WHITFIELD. Yes.

Mr. GUARINI. Having been there, what is your impression as to what the legalization of marijuana would do with regard to creating more drug abuses? Had you had the experience yourself of starting from marijuana, or have other people you work with?

Mrs. WHITFIELD. Yes, of course, it has been my experience. Marijuana was the first illicit drug that I experienced. I was not satisfied with just the marijuana; I was looking for a higher high. I was looking for the Colombian type because it was supposed to be a higher high. Eventually I was looking for other types of drugs to get this higher high.

One thing in particular that marijuana does lead to is putting you in a very vulnerable position because if you are around marijuana users, marijuana sellers, you are going to be introduced to other drugs, because nine times out of ten these same people will have other drugs in the event you want something to take you higher.

I think legalization of marijuana would be a very big mistake. It would be the beginning to legalization of drugs. I think it would definitely be the first step: marijuana today; tomorrow cocaine, crack, heroin. Where does it end?

Mr. GUARINI. Is your experience the same as the basic experience of other people you work with and help?

Mrs. WHITFIELD. No. There are many people who did not begin abusing heroin and cocaine after they started using marijuana. I know people right today who have been smoking marijuana since before I was born and have never, ever gone to harder drugs. But that does not mean that I believe marijuana should be made legal, because, as I see it, I feel that it would be the beginning to legalizing other drugs.

Mr. GUARINI. Have many people started with marijuana and gone on to other harder drugs?

Mrs. WHITFIELD. Yes. Many of my clients, many of the drug abusers that I work with did, of course.

I don't know where to draw the percentages. Many of them started with marijuana. Many of them did not, and started right off with crack or PCP. Then when you look at PCP, you know, it is very, very seldom that a person would experiment with PCP with-

out experimenting with marijuana, because usually PCP is mixed into the marijuana.

Mr. KAREL. Would you indulge for me for a brief response?

Mr. RANGEL. The Whitfields have not had an opportunity to make the same type of contribution that you have. We do have a time problem because we have other witnesses. I wanted to ask the Whitfields something as it deals with crack, cocaine and heroin.

People have stated if you legalize marijuana, that it could really come to legalizing the other drugs as well. You don't have to go very far, because the next witness has introduced legislation into the New York State Senate in terms of legalizing all drugs that are not legal now. We will have an opportunity to hear from him. As a matter of fact, the Mayor of Baltimore in his recommendations to this committee yesterday indicated that he would have a narcotic maintenance program which would include cocaine and heroin maintenance and that would be available along with methadone maintenance, and this would be publicly supported so that in communities that had these types of problems, whether they came about because of poverty or homelessness or whatever, instead of providing a social outlet help center he is suggesting that we have doctors and nurses, not providing prevention, but that we will have them providing maintenance for cocaine and crack—he did not say "crack"; "cocaine" is in his statement.

I would like to know, as you try to go out into these communities—and that is the reason I want to concentrate on the Whitfields, because I think with all our witnesses you are the only ones who come from the communities that have been hit hard with drugs, you come from the communities where they want to legalize them to give you and your clients a break, as one of the professors said, in legalizing drugs. Senator Galiber will be testifying and he is one of the very few people who have come forward with answers to my questions.

When I asked what narcotics and drugs would be legalized, thinking it might intimidate some people, he said all. When I asked who would be able to buy these narcotics, would there be an age limit, he said the same as for those purchasing alcohol. When I said would we sell drugs to people who just want to experiment and encourage them to pick up the habit, he said we will sell drugs in the same fashion with the same restrictions as alcohol. When I asked where these drugs would be sold, Senator Galiber said the same places as alcohol. When I said where would we obtain a supply of these legal drugs, Senator Galiber said in the same way that they are manufacturing alcohol.

Would private industry be allowed to participate in this market? Of course, the same as alcohol.

If drugs were to become legal, would we allow pilots, nuclear plant employees and train engineers to use them? Do we permit them to use alcohol? How would we back up the argument with the children and youth that drugs are harmful? The same as for alcohol.

So don't worry about the train coming into your station; it is here. Knowing the pain and suffering of alcohol, I would just pray every day that God would be good enough not to put an additional burden on my community.

When I used to think of the number of bars that we used to have, the number of so-called state stores and liquor store, how easy it was for me and my friends as kids to get wine under age because someone would always buy it—if I were to think in every casino, every restaurant, every place that sells liquor and alcohol, that we now can have drugs available to them, then I would suspect I would have to thank my dear friend and former colleague, Joseph Galiber, for just showing what we would have to deal with.

Can you tell me, as you try to save some lost souls and bring them back, what your job would be if, in addition to the liquor stores, you had the crack, cocaine, PCP, LSD, heroin and other drugs available?

Mrs. WHITFIELD. I am glad Mr. Galiber put forth his suggestions. Sometimes to point out the ridiculous, it helps us to see how hypocritical maybe we are about some things. That is all that his proposals do for me.

Addicts want more drugs, the best drugs and as many drugs as they can get. The thing of maintenance just does not work. A person does not start using drugs to get maintained. All of you have said they start using drugs to get high. Cocaine and heroin and a few others, the more you use, the more you need to use in order to feel as good as you felt the first time.

So when you start talking about legalization, somebody is going to have to have the right to increase that dosage upon demand. They don't want to be maintained, they want to get high. If you are not willing to let the person get high, then maintaining a drug addict is out the window.

You cannot use methadone as an analogy because it has a blocking agent and it does not give you that euphoria.

Coming from your area, Representative Towns, I remember back in the early 1950s we looked at Brownsville in East New York and said all we had to do was declare war on the United States and maybe we could get the same kind of aid West Germany got to get rebuilt, because Brownsville looked like it had been bombed out in the Second World War.

As long as you have people who don't have any hope, don't see any opportunities for themselves—I am not saying the opportunities may not be there, but if their circumstances have not shown them how to get from point A to point B, if it is not heroin and cocaine they will find another destructive behavior.

Now, the people who have the opportunities and the goals, are they going to stop? Are we going to have people who, when they get ready to be asked to go on the Supreme Court, have their records show they smoked a joint or they did that or this? How about the civil rights of these people we are proposing to make legal drug abusers? Will it make them more employable? or, those who are unemployed because they are unemployable because they don't have the skills, are we going to give them dope and move them out of the way?

We are talking about two groups of people to legalize drugs for: those who can afford it and those who cannot. Those who can afford it can be reclaimed and put back into the system. When you talk about reclaiming the other people, the various committees you

have in the House, Housing and Welfare or whatever—the taxpayers are not going to pay for this. That is what you will say.

You cannot tell me about the treatment programs for these legal drug users. If you put it in the private sector, they will be as expert as all other private sector businesses in avoiding their tax responsibilities. They will not pay for their pollution through "additional taxes."

I think every now and then we feel a need to cleanse ourselves. I think that has been brought about not so much about the drug abuse problem, but because of the spectacular killings that have been going on across the country. When I say "spectacular," I know they are. When we can see it on television, we feel it is coming at us next.

King's County Hospital, Mr. Towns, is where I first went into the methadone maintenance program in 1970. I happened to be lucky enough to have a program in my own mind when I went there. They told me they would maintain me on methadone for the rest of my life. That is not what I wanted. I had destroyed myself to the point I had no place to go but up, and getting high was not a part of it.

Many people went into that program because they were worried about going to jail. They were lazy and didn't want to hustle, whatever that means, sticking somebody up etc. They didn't want to do that. If the criminality could be removed, they would go and get the pill, get their bottle of cheap wine, go to their psychiatrist and get the uppers or downers and they were off again. So you have not stopped them getting high and you have not stopped the problem.

I am not criticizing methadone. All I am saying is that they did not present a program to go along with it. I don't think they had as much concern about what that person was going to do productively when they stopped using heroin as they were in getting them out of the businesspeople's hair and losing money based on their criminality.

Mr. RANGEL. Mr. Whitfield, I hope you will expand on your thoughts and work with our staff, because you have hit something on the head when you talk about this emotional concern about controlling violence where constantly we see killings on the street of innocent people. Mayor Schmoke would say they are fighting over the profits.

I hope you can include in your research, which you don't have to research because you've lived it, the number of kids being born addicts and the fact that in the hospitals it is costing us $500 to $1,000 a day with these kids, many born with AIDS. Many of these kids are dying. They die from tuberculosis, they die from a variety of diseases that drugs have exposed them to.

Drugs will not allow people to take advantage of the things God gave us, you know, get out of the rain, get out of the cold. Drug addicts don't get them. They die and they are not included in the body count. They are not considered victims as they should be.

In the final analysis—and this is the cruelest part of it—many of their parents and family and friends don't even attend the funeral, they don't identify the body at the morgue, because it does not have the glamour.

This is where Mayor Schmoke, the new mayor of Baltimore concerned with violence on the streets, would say he believes by taking the profit out from the bums and killers on the street and giving the profit to the pharmaceuticals and allowing them under some drug stamp or Medicaid program—you know, we can find money for jails when we cannot find it for education or homes.

Mr. WHITFIELD. Or for treatment.

Mr. RANGEL. If it looks like you are controlling them, you find the money. We found the money for methadone, a highly addictive drug, allegedly to wean people off heroin. Forget it; it is criminal.

Suppose we expanded that so you could get, now, in your neighborhood clinic, according to the recommendations made by Mayor Schmoke, cocaine from one doctor or methadone from one doctor or heroin from another doctor. Drug addicts being what they are, do you think that would eliminate the street crime that attracted the attention of people?

Mr. WHITFIELD. Of course it would not. If people are worrying about street crime, they need to look at the body of people who historically have been responsible for that street crime.

If it is not heroin, cocaine, it will be something else, because you have that one group of people who are making their own response to their conditions. The drug is not necessarily the problem. The drug is the response to a whole panorama of other problems.

The one thing I do not want to do, I am trying not to make this a class issue, because I do recognize that whether this legalization goes forth or not will depend on the people who are largely not affected by drug abuse. Those most affected will not be out there voting. Those people who are going to vote are thinking about getting that threat off television and out of my neighborhood and they may vote for this. But I want them to think about their youngsters who are also at risk.

I have also been a housing director at one of the major universities in this area. I have seen these youngsters of privilege that can be rescued after five or six years completing a four-year degree on their parents ability to contribute a chair or something else to a university to keep their child on campus with their drug abuse, as opposed to outside the boundary of that campus.

I want everybody to recognize, wherever you come from in the social and economic stratum, the danger is there. The more privilege you have, the more you can hide it but it is still there. There is a greater danger of these people becoming our doctor, lawyer or politician. There is no stratum of life in America that is immune to it.

I am not wishing this on anybody in the Congress, but I would not be at all surprised or shocked if a year or two or tomorrow a scandal might come out that one of our Representatives or Senators was abusing illegal drugs, because this is the reality of America. It is not just a poor persons problem.

Mrs. WHITFIELD. Let me say, in terms of legalization of drugs decreasing our crime rate, if drugs were legal do you really believe that Reboks would be any less important in the minds of our kids? Do you believe that all the advertising that comes on TV, the way they glamorize everything, the designer clothes, hairstyles, cars, jeeps—do you think this is going to be any less attractive to our

young people? No, no. If drugs were legal, they would not get the money by selling drugs, but they would go in another direction.

It would do nothing to deter the crime rate in our society today, nothing at all. It is where America places their values. It is what we expose our kids to on a day-to-day basis. All the time parents cannot instill those values when there is peer pressure out there that our kids are confronted with on a day-to-day basis, peer pressure that makes our kids want to do what the next child is doing, just to fit in, who want to be like Miami Vice stars.

So when you look at decriminalization of drugs, believe me, it is not going to do anything to lower the crime rate. You need to come up with something different.

Mr. RANGEL. Listen to this. Mayor Schmoke would say that he does not want to give drugs to non-users, and that he would have the requirement that persons have to be addicted for one year to become eligible to enter a methadone treatment program.

Based on our experience, unless the drug centers are open 24 hours a day, or if Senator Galiber, in his candor, said that you can get as much as you want like alcohol, which you can buy by the truckload today, wouldn't these addicts going to the federally supported drug centers want to get drugs outside of the legal limits? It is possible that the Mayor is suggesting that the patient would be able to get all he wants from the doctor?

We assume that the doctor is going to cut it off. Does the cocaine or heroin addict say, well, that is all the doctor gives me, I have to wait for my next appointment?

Mrs. WHITFIELD. There would still be a black market for drugs.

Mr. WHITFIELD. I want to take Mr. Galiber's point one step further.

Mr. RANGEL. This is Mayor Schmoke. Senator Galiber has only one limitation, like with alcohol, if the person comes in and appears to have had too much.

Mr. WHITFIELD. The same as you have after-hour clubs when the bars and liquor stores close and on Sundays in many neighborhoods, like I know in New York there used to be places where they could buy liquor illegally.

Mr. RANGEL. I have to interrupt you. I used to be a part of that. That was because we did not have enough money to store up on this stuff. If you get the Mayor with his legalized stuff and the Senator with his open market, we won't have to go to after-hours clubs because now you can have all the liquor you want in your house, so you would not have to worry under Senator Galiber's program. Under Mayor Schmoke's program you will have to have it after it is dispensed in the clinics and hospitals.

Mr. WHITFIELD. With alcohol abuse they are starting to try to prosecute people who allow people who drink too much and then go out and drive and kill someone.

If the purveyors of this drug were allowing someone to use too much and they OD'd, would they be prosecuted for contributing to the death?

Mr. RANGEL. Not if they bought it at a retail store. I am certain the same laws that govern alcoholism, if a doctor was to prescribe a dose of alcohol to an alcoholic, I think the same rulings would apply.

The Senator is a lawyer. Stick around.

Mr. Dornan.

Mr. DORNAN. Thank you, Mr. Chairman.

First of all, I am sorry I missed yesterday's session. I was on the Floor all day with legislative duties.

I picked up the packet at the end of the day, including Mayor Schmoke's testimony. I have been reading all the testimony today.

I was particularly impressed with Mr. and Mrs. Whitfield's testimony. I read all the way through Mayor Schmoke's testimony about the hopelessness that we have lost the war. But I agree with our Chairman that the war has never been fully engaged.

I know on one stream, which is not Senator Galiber's position or Mayor Schmoke's position or even NORML's position, sometimes I feel it is the Libertarians who say we are against all this destruction, but it is your call, back off, you are going to end up in a mess.

Mr. DORNAN. Where I find people drawn to Libertarianism on economic matters, taxes, which is the main draw to their party, but they don't seem to make the connection when people end up in sanitariums, if not dead which is being paid for by American taxpayers. There is no such thing as a free lunch or a free joint.

Now we have seen in tragic instances, solutions on the far right of the spectrum, on what to do about drugs in which you execute people who are smuggling small amounts, as happened in Malaysia with two young Australians. The President, Margaret Thatcher, and the Pope weighed in and asked Malaysia, to please not execute these two young men. They were executed. And guess what? That type of extreme punishment, similar to chopping off poor people's hands for shoplifting in Saudi Arabia, has worked in Malaysia. They haven't had much problem with drug smuggling through there lately. It may not hold, but when you execute two young men in the prime of their life, say in their 20s, for smuggling small amounts, it seems to get the message across. But nobody is going to sanction that in our country or any of the countries of what we generally refer to as the free world, Asian or Arab countries excepted.

But somewhere in this spectrum of solutions to curbing the demand side is a formula that works, that is reasonable, that we have not yet tried. The chairman, a Democrat from New York, believes this, this representative from California, born in Manhattan, believes that. And I believe that is what the drug bill showed last week. Our chairman pounds on the Republican Administration very hard, but always takes time to graciously compliment Nancy Reagan. I defend the administration, with some criticism. But our chairman doesn't accept my theory, that liberal permissiveness for 20 years, which I was battling on television 20 years ago as a public affairs host, said "turn on, tune in, and dropout," or "if it feels good, do it." The Libertarians have only recently adopted legalization as their philosophy, together with articulate ACLU lawyers weighing-in in favor of protecting pornography, another disease of the streets, and liberal permissive attitudes about narcotics. But I don't care who is at fault. That is something about which we can disagree.

My chairman wants to get tough, I want to get tough, and we have to at least try to dampen the demand side. We need to work

the Customs, the radars, the Coast Guard, with Naval assistance, to try to capture the mother ships bringing drugs into our waters on those fast million dollar "cigarette speed boats". I don't give a darn about Noriega any more. His days are numbered just as are Namphy's in Haiti. Time will take care of that guy. Namphy is probably not involved in the business of killing our kids any more because he is under the spotlight.

The demand side policy now seems to belong to the liberals in this Congress, but this conservative has not given up that fight.

I was in Jacksonville a week ago Monday, out with four police cars following a beat-up Camaro, with a policewoman, 24, looked 15, a police officer 21, looked 16, in this car buying crack from 12-year-old kids on bicycles. One little kid is lying in the dust with handcuffs on.

I said, "What is your name, son?" "Bobby, sir." "Bobby, where did you get the crack?" "Jefferson Street across town." "What did it cost you? What did it cost you?" "Five bucks." "What are you selling it for?" "You got the $20 bill, you know, it is $20." "Does your mother know where you are?" "No. sir. She would whip me." I said, "Are you going to be back here?" "No, sir. I thought you were going to shoot me." "You are not going to spend any time in jail, let's face it. You know that, don't you?" "Yes, sir." This little 12-year-old will be back on his bicycle when he is 13, 14, 15.

I thought about the legislation argument, standing there in this poor housing project in Jacksonville, Florida, and I thought to myself, would legalizing it cut the cost? I said, wait a minute, we are not going to let 12-year-old kids in on this. NORML won't. The Libertarian party would say you can have laws to protect the minors. We are back to government regulation, which our chairman pounds on relentlessly which Mayor Schmoke and I am sure the New York Senator is going to agree with. Legalization would put the government in the business of purity control, advertising control, product control, but Customs would still be out there trying to interdict the Black market as will the Coast Guard.

As Mrs. Whitfield said, we are wasting precious energy debating what the government's role should be when we should be trying to wage the war against drugs. So I guess we are at the end of this panel's testimony. Since I wasn't here earlier, I am reading your testimony now.

If anybody wants to comment on what I said, I have run out of time.

Mr. WHITFIELD. This may be out of context from what you said, but the gentleman sitting next to you before said in waging this war, we needed to go into the countries, the various countries, and do this, this and that.

Mr. DORNAN. Mr. Shaw, a former mayor.

Mr. WHITFIELD. As he was saying that, I do not think at least for that part of the population that feels as if they don't have any way into the system, I don't think the war has ever started there, and I am not sure if the government is willing to start the war there.

And as far as penalties, you mentioned about cutting off the two kids' heads in some place, I said before the kids that I am talking about that I know, that I am dealing with, they have been so brutalized and they see violence, that you can't up the ante on them.

The only thing that can be done is a time thing where their attitudes can be changed. Because I am telling you these kids do not care. I know, because I was one of them. If you put me in jail, I would say, yes, and I can do it standing on one hand, and if you are going to kill me, I am going to kill you, don't take what belongs to me. That is the way they have to live out there. You cannot sell drugs out in that street if you let someone else take one ounce of drug away from you. Death isn't going to be the answer. So you kill them.

But I tell you one thing, the people that are investing the money to bring it into this country, if you start executing them, then you might have a change because they are afraid of going to jail. They are afraid of being killed. The people that are investing the biggest amount of money in bringing these drugs into this country, they do not have to suffer some of the penalties.

Mr. DORNAN. Does all or part of your panel agree that rich people, meaning that one to two percent of our society in which money just is different than it is to all the rest of us, have so much money that a budget on the personal level means nothing. Aren't rich people always going to be able to buy their own self destruction? Are we ever going to stop rich people from buying cocaine and bringing it in on their personal jet without much chance of them getting caught? We can't let our laws be driven by anything that the super, rich and famous can get away with.

I like it when you say it is a class problem. It utterly destroys the poor economic classes, and it guts the middle class. But sometimes I think that the super rich have almost as tough a road through life as the poorest of the poor. As Jesus said, "It is harder to get into heaven than it is to put a camel through the eye of a needle."

I am not going to write laws based on what the super-rich can get away with while jeopardizing the disadvantaged and middle class of this country.

Mr. MILLER. We need a reasoned policy, and you know that with Gramm-Rudman-Hollings, there is not a bottomless pit of money. The bill that I provided to the staff and to your chairman today, which I asked be made part of the record, provides a means to raise some money to deal with these problems. The Whitfields are right about people going in there, yes, we will give you your methadone, we don't have a program for you. I know from my own personal experience of people who wait three, four, six, eight months to get into a program, they've got no place to go. Let's separate one drug that is not so harmful from the others, let's use the generated funds and save money to help the people you were addressing and help those little young 12-year-old kids not have to go into the street to do that. Let's be rational, let's be willing to make a change, let's look at it from a different perspective, and I think the availability, control, tax and regulation of marijuana is not going to create the problems.

You heard the Whitfields say they knew people who started on it and went harder, they knew people that did not start on it and went harder. Let's be reasonable and let's work together.

Mr. RANGEL. As we end this panel, I hope the Whitfields would be kind enough to let me know more about their program. I would

like to be able to visit there with you, and also if Mr. Moore would send me something about the Scott Newman Center.

[The information referred to was not received at time of printing.]

Mr. RANGEL. Mr. Miller, I just would want you to know that I smoked for 35 years, starting when I was 15 years old. I knew it was against the law, but it was in the cigarette machines, and it didn't take much advertising except one kid had it, another kid wanted it, and when you indicated, you know, that you thought that marijuana could be manufactured the same way and distributed the same way as cigarettes with the exception of the advertising, I just visualize the candy stores where they used to sell the cigarettes when I was buying them for one cent apiece or the vending machines——

Mr. MILLER. No vending machines.

Mr. RANGEL. Well, whatever. Where kids would just have to feel they're a little more important than the guy who just had straight cigarettes. And I hope you give a little more thought to it. And I say that in realizing we haven't been fair to smokers generally, especially those who smoke tobacco. If you want to talk about how immoral, how hypocritical it is for us to subsidize tobacco, we can talk about that.

But when you say, and let's give marijuana the same kind of shot, you know, as we have given to cigarettes, with some restrictions, I don't know. I just don't think that is well thought out. In any event, I have never heard anyone from NORML talk about it the way you have, about going the straight cigarette manufacturer route, and that might be interesting, and maybe at the next hearing I will be using that bill the same way I intend to close this one with the Galiber bill.

Mr. MILLER. If there is a reasonable way to make it available that can reduce youthful acquisition of the substance, I am in favor of it. And if we are of a mind that it is worthwhile to change the policy on marijuana, let's reason together and draft a bill that will achieve that and answer our concerns in a successful way, but let's not criminalize the 50 million marijuana smokers in America like we have in the past.

Mr. RANGEL. If it ain't good for you, you shouldn't want to legalize it. Thank you so much.

Mr. RANGEL. And now I would like to bring Senator Joseph Galiber, a long and dear friend of mine, and even more than that a colleague when I had the privilege to serve in the New York State Legislature.

Senator Galiber is a senior member of the New York State Senate, a respected person in his party and in his community. Senator Galiber is no stranger to the problems of poverty, joblessness, hopelessness, because I think it is safe to say that he represents in the State Senate, and has for over 20 years, I believe, one of the poorest, highest unemployed communities that we have in the City of New York.

Congressman Robert Garcia had wanted to be here to introduce him, but I am certain in view of the friendship and the working relationship I have had with you, Senator, he would allow me the privilege as the chairman and as a friend.

Senator, I have taken the liberty of telling other people about your bill. Why don't you just tell us in your own words what you think your bill would do in order to control the problems that we are facing with drugs today.

TESTIMONY OF THE HON. JOSEPH GALIBER, SENATOR, NEW YORK STATE ASSEMBLY

Mr. GALIBER. Thank you, Mr. Chairman, for allowing me the opportunity to testify before your committee, and you were correct, as usual, we collectively have been concerned about this problem for some 20 odd years. In the 20 odd years we have seen little or nothing happen in terms of solving the problem. The hearings that we are having today and yesterday and the notoriety attached to these hearings and the notion of legalizing or not legalizing, can you imagine, Mr. Chairman, five years ago? They probably would have run all of us who are suggesting alternatives out of town.

I introduced a bill this year, and the bill is a very simple one, it creates a commission, an authority, if you will, and built into the authority is a commission to study the legalization and decriminalization.

In addition to that authority, it has set up something similar to our liquor authority in the State of New York which may or may not have been working, but is doing better.

Mr. Chairman, I would like to say to those who have not been rewarded, and I certainly have been rewarded by your friendship through the years, give them just a brief background, and I have heard a great deal today about those folks who live on the other side of the track perhaps who look on our side, and I say ours because I lived in the South Bronx for some 60 years, and I have not moved out. I have lived within a radius of five miles for those 60 years.

So when I talk about this problem, I don't dub myself an expert, but I certainly know a little bit about it. And you are right again, the husband and wife that testified here today, they are the experts. They have gone through this experience, and they know a lot more than we'll ever know.

Mr. Chairman, we have got a great country here, and as I have listened I have come to the conclusion, as I had when I was much younger. America, Mr. Chairman, was conceived as the noble experiment, the shining bastion of liberties and freedoms for all the world to emulate and strive toward.

Now in an era when other nations are indeed emulating American's craving for freedom, rising from chains and oppression to shake their fists at ancient monoliths, American officials have begun to espouse rank violations of our civil liberties and freedoms, and this out of frustration.

I realize, of course, that these well-meaning officials say that they are raising their voices for these drastic measures to combat a most pervasive disease, worse than cancer, worse than AIDS: the proliferation of drug use.

But these officials must see, if they ever hope to combat drugs that their every effort to escalate the war against drugs is at the same time a concession that the war is being lost, that their incur-

sions into civil liberties are as dangerous to our very foundations as they are important to combat the problem in light of what must inevitably occur.

What must we do? Gentlemen and ladies in the audience within the sound of my voice, is to eliminate drug trafficking through the legalization of narcotics.

I realize there are some who hear my words and look at me as I sit before you, thinking such an idea preposterous, inconceivably simplistic and naive, a monstrous immorality.

As each and every device, plan, expenditure, interdiction thrown into our breastworks fails to hold the deluge of water from rolling downhill, I suggest to you that you mark my words: legalization, the proper channeling of the deluge, the treatment and calming of the waters, is not only the solution, it is inevitable.

And so should it be. When responsible officials suggest arming our police with more powerful weapons in the name of fighting the drug war and when officials suggest that interdiction of and shooting of suspicious planes, and I said, yes, suspicious planes, when Presidential candidates call for doubling the monumental numbers and costs of agents to be thrown into those defenses trying to keep the waters from coming downhill, when plans are made for material law to be enforced in this capital of our republic, when the drum beat for death penalties for drug traffickers are being pounded by otherwise sane and sober leaders, when all this is being espoused despite the fact, and each and every one of you know that the professional, clear, and unanimous opinion of all those engaged in the front lines of that war, is that we are losing that war, that we are falling back further each day, then I say you must sit back now, right now, in your chairs and let this message flow over you like water from a waterfall.

It won't hurt, you can hand tenaciously to your outmoded concept of fighting the losing war, but at least harken to reality.

There is a simple reason why every person engaged in the front lines of the war has reported that the war is being lost. Millions of our citizens are using those drugs. Every day, right this very minute, all over this country, private citizens are using drugs, buying drugs, craving drugs.

No one can seriously suggest that all the drugs that are smuggled into this country each day are being stored somewhere in a vast underground cavern, unwanted, unused.

Hardly. They are being used. Some estimates have the percentage of citizens over the age of 21 years who have at least experimented with drugs to be over 40 percent, 40 percent of our citizens.

The drugs are being used, consumed, by people, by citizens of the United States of America, did one of our Presidential candidates say that our nation, with one-fifth of the world's population, uses 50 percent of the cocaine in the world?

Did another of our Presidential candidates suggest the road to solution is a change in values, education, yes, indeed, treatment, rehabilitation, a diminutive of the craving, the need, the desire, the curiosity?

Will shooting suspicious planes out of the sky and flaying and quartering every person who deals drugs make this craving by our citizens for the white and, yes, black dream disappear?

You can hope it might. But realistically an arrest of a drug dealer does very little for the experimenter, the drug user, the addict.

And, surely, in such a lucrative field, others will and are willing to step into the breach to supply drugs for vast profit.

What we have, what we are talking about here, what I am talking about is that we have two, two very different and very real problems.

Perhaps that is the downfall of our present efforts to stem the tide of drugs.

Most fail or refuse to recognize the independent coexistence of the two problems: drug abuse and drug trafficking.

It is the drug trafficking that causes death in the streets, shootings, which we spend money to prevent, the Coast Guard, ships, planes, agents, spraying crops in foreign countries, international intrigues, international convolutions of national import. All that deals only with the trafficking.

Now if by a simple expedient we could eliminate all drug trafficking, all drug trafficking, so that our nation might turn its attention to the problems of our citizens, turn our resources and efforts to helping our citizens, would that not indeed be the position, the plateau we should desire?

I assure you, and as you listen, you know that these words are true. If by midnight tonight we were—just bear with me with open mind—if by midnight tonight we were to legalize narcotics, give it away, free, to those who need it, desire it, in hospitals, under controlled circumstances, then I say to you, not a plane, not a boat, not a courier would come to this country beginning at one minute after midnight.

Why? You know the answer. The profit is gone.

And so instantly without anything further the most violent of our problems, drug trafficking, would stop.

Of course, that wouldn't eliminate drug abuse. But right now we have horrible problems of drug trafficking and all the violence that goes with it. And we have drug abuse. But would we not be better off if we could carefully, thoughtfully throw our every effort into eradicating drug abuse only?

Now, the committee asked what they called "key questions". We have the advantage, Mr. Chairman, because you read my questions with the answers.

Mr. RANGEL. No, Senator, you knew my questions long before you came here.

Mr. GALIBER. I am not being facetious about it, just sequacious about it. I think perhaps it warrants me saying it over again. I wasn't being critical at all.

Mr. RANGEL. Okay.

Mr. GALIBER. Now the committee asked what they called "key questions" as to what drugs would be legalized, who would be eligible to obtain the drugs that would be dispensed or available, who would manufacture them, grow them.

Think of the narcotics industry along side the alcohol industry, and alcohol, for all those who refuse to admit it, is our most abused drug, and it's available everywhere. If you measure drugs by effect

or influence on the mind and body, then tobacco isn't a shabby contender for the prize of most abused substance.

To answer the key questions of the committee, by thinking of the alcohol industry, the answer becomes automatic. For example:

Q. What narcotics and drugs would be legalized?

A. All.

Q. Who would be allowed to buy these narcotics? Would there be an age limit?

A. The same limitations as those for purchasing alcohol.

Q. Would we sell drugs to people who just want to experiment and encourage them to pick up the habit?

A. We would sell drugs in the same fashion and with the same restrictions as the selling of alcohol.

Q. Where would these drugs be sold?

A. In the same places and under the same controls as alcohol.

Q. Where would we obtain our supply of these legal drugs?

A. In the same way that there are manufacturers of alcohol.

Do you for one minute think the tobacco industry has not put together long ago contingency plans to produce marijuana cigarettes when legalization becomes a reality?

Q. Would private industry be allowed to participate in this market?

A. Of course. In the same way as in alcohol.

Q. If drugs would become legal, would we allow pilots, railroad workers and nuclear plant employees to use them?

A. Do we permit them to use alcohol?

Q. If drugs were legalized, how would we back up our argument with our children and youth that drugs are harmful?

A. In the same way that we do with alcohol.

Every question can be answered in the same fashion and it is not a mystery that it can be done. Nor is it a mystery that it should be done.

We should treat narcotics addiction. We should spend our money treating citizens, curing them of this disease. But what, indeed, does that have to do with eliminating drug trafficking immediately?

The Volstead Act, which made liquor illegal, created violence, warfare, bloodshed, corruption, illicit dealers and sellers on a sale that was unprecedented until now.

And then liquor was legalized. And when it was legalized, I ask you, does any one know a bootlegger running around the streets supplying their illicit contraband? Are people worried about drunks mugging them in the streets or breaking into their apartment to get funds to buy a pint of wine?

We now deal with alcoholic abuse as a medical problem. Let us proceed into the future to deal with the drug problem in the same way.

But let us not repeat the mistakes of the past by continuing to escalate a war which is totally unnecessary.

I guarantee, and in your heart's heart, you each know, that if you legalize drugs, trafficking would stop immediately.

You would then only have one problem to fight. Granted, it is a vast problem. Just as Robert Kennedy opined, "If the alternatives

were disorder or injustice, the rational choice is injustice. For when there is disorder, we cannot obtain or maintain justice."

So too here, when the disorder and turmoil of drug trafficking surrounds us, we have no capacity to—and we are not—dealing with the drug problems of our citizens.

We must eliminate trafficking and deal with addiction and help our citizens, not excalate a war which we are losing and which threatens a liberty, our nation, and our very existence.

Mr. Chairman, thank you for the opportunity.

Mr. RANGEL. Thank you, Senator. And believe me if I could think of any way that we could put the question of legalization to work, I think we would do it with your bill.

Tell me, Senator, have any of your colleagues in the Senate co-sponsored this?

Mr. GALIBER. I believe there are two, Senator Ruez, and possibly one who wanted to remain anonymous until after the primary.

Mr. RANGEL. It must be a new way of sponsoring bills in the State Legislature.

Mr. GALIBER. This is the way it is. As you have been honest with me over the years, understand that I want to be honest with you.

Mr. RANGEL. How about in the New York State Assembly, have we had any legislative support there?

Mr. GALIBER. There is no one carrying the bill at the present time.

Mr. RANGEL. Let me ask this: If we are going to use alcohol as an analogy, I assume that you might expect the number of distributing centers, whether we call them State stores or places where people can get it, would be relatively the same where the need is. Is that correct?

Mr. GALIBER. That is not necessarily so. In the bill we set up an authority consisting of five persons who would then be responsible for rules and regulations and the procedural part, as you have suggested—you have all the answers now, I don't have all the answers. All that I do know, Mr. Chairman, is that over the 25 years we have known each other and all the things that we have, those are our givens. They have not worked.

What we offer is something for the future, something that hasn't been tried, something that we are talking about, and we are encouraged by your hearing.

Mr. RANGEL. We are talking about supply and demand, so no matter how many people are on the commission, you are going to have distribution centers where you have the demand. And there is no question it will be your Senatorial district and my Congressional district.

Mr. GALIBER. It may very well be. It will be all of New York, not just ours.

Mr. RANGEL. Then I guess you might say as you find people's need for alcohol, that is where you find the bars, that is where you find the stores. You would suspect you would find that is where the drug centers are located, where you find the demands.

Mr. GALIBER. I think we have liquor stores and bars in Albany, New York, Orange County, Duchess County, and elsewhere.

Mr. RANGEL. I am not being critical. I was trying to get back to our constituents where we have the situation where a person

cannot afford to buy the drugs and I am certain you would not want your bill just to deal with the middle income or those who can afford drugs, do you have a way where we can provide for some equal rights of the poor as it relates to access to these stores.

Mr. GALIBER. Let me suggest this: first, it was thought of that it was a possibility for the first couple of years it would be possible for us to use the health centers in town and ultimately we would take the liquor store approach, where it would be made available to all persons.

What happens to the person who seeks out the thunderbird that we used to know about or the pint of wine? Does that person go to medicare and medicaid? The answer is no.

Does it mean that the poor do not drink?

The answer is no.

Does it mean that the bill applies only to middle class and those who can afford it?

The answer is no.

Apply the same question to alcohol, liquor store or bar, same analogy.

Mr. RANGEL. Then they could buy as much as they could afford to buy?

Mr. GALIBER. That is correct.

Mr. RANGEL. And you really believe that the wino's appetite for wine as it existed when we were kids is the same as the crack addict's appetite for crack?

Mr. GALIBER. We are good at this, those of us who participate in Government, in highlighting the best of our points. I suggested this in the spirit of finding out. We must find the solution to this problem, that we seek the other aspects.

I said there were two problems, one was profit. Once the profit is out, we must redirect that money into education or other modalities—whatever is needed to take that profit out.

So there are two separate and distinct problems, not just one. If we want to talk about the poor neighborhoods, you and I know that they put a fence around our neighborhoods some years ago and suggested that was the only place they could sell narcotics. This is racism, then and now. Our streets are caldrons of racism and it still exists.

Until we get the profit out, the profit that I talk about, Congressman, and your colleagues, can pay off the national debts of many countries.

Mr. RANGEL. I am not seeking to reduce the deficit by legalizing drugs.

What difference does it make to a mother or father whether it was a bum in the street that sold drugs or some State drug center.

When you are allowing drugs to be sold anyplace where liquor is sold, how does that end our problems?

Mr. GALIBER. The profit and the trafficking is out.

Mr. RANGEL. So what?

Mr. GALIBER. If you would let me finish, the answer is not a simplistic answer, but the idea is that you can buy liquor or you can buy the drug. Why is it we can buy liquor and not the drug?

Mr. RANGEL. I am asking you, you can buy cancer, AIDS, liquor, drugs, I am asking you, now that you have taken the profit out of it——

Mr. GALIBER. That is correct.

Mr. RANGEL. At least for the street hustler, you are certainly going to have profit in there for whomever comes in to manufacture it.

Mr. GALIBER. The same ones who manufacture liquor, there is a profit there.

Mr. RANGEL. The same one that grows the barley or the crops, now it would be American farmers and you will have American processors. My question, Senator, is: how is that going to help your constituents and my constituents now if your bill became national law? You will find that the profits have been transferred from the street hustler to the drug center. How does that help with our addiction problem?

How does that help with access to the drugs?

What does it eliminate besides profit?

Profit just is not something that is bad in America. What has been eliminated besides the bums in the street not making the profit?

You have transferred the profit from the street hustler who would kill another hustler to an entrepreneur who will make profits and probably advertise to say which drug is better than another drug.

Probably from the billboards they will say crack is better than heroin. The fact that you are legalizing it, I don't see whether that helps my kids or grandkids any.

Mr. GALIBER. It does help in my community. I go there every evening. For the last 60 years I have lived there I hear what they say.

They are tired of being locked in their houses at night, tired of being mugged. Forty to 60 percent of our present population in jail.

We are tired of it. Mayor Koch suggests that if a plane tips its wings, shoot it down.

Mr. RANGEL. It bothers your constituents?

Mr. GALIBER. Yes, it does. It bothers my constituents that we have no place to put criminals so we cannot walk the streets at night. There is no money for education.

Even for the models, if you will, you will know this as well as I do, but the drug problem in our community means a great deal to those persons who live in the community. If it is legalized and it may be and it may not be, but if it is legalized, then folks can go.

You never heard of anybody's use of alcohol preventing our parents from going to church on Sunday, prayer meetings on Wednesday, walking the streets, no fear of going into their houses in the evening. It is not a simplistic approach and we know it, those of us who advocate it.

Mr. RANGEL. I think what you are saying is, if they want drugs, give them to them and there is no companion bill which talks about giving them a little hope, giving them a little education.

You have methadone clinics. I have methadone clinics. I think it is one of the greatest indictments that we have in the present system.

Mr. GALIBER. If you would allow me to speak to that, back when we served in the New York State legislature,—a little after you became Congressman, I suspect as I count back, it was Rockefeller who suggested when the Dole husband and wife team found that in the withdrawal process where methadone was used, they could maintain, have their tang in the morning, go out and work and stop cracking the cribs and doing all the things we were talking about. That was a marvelous presentation by the young married couple who said there was no program.

But there was a program. They were supposed to go to phase two. Most of them never got there, but it was a therapeutic approach and then they were drug-free. Most responded, why should I take the chance of going back to heroin?

I go to work, I am with my family and drink my tang. There was an opportunity to put a halt to it, but it ended. Talk about marijuana very briefly, they are talking about legalizing it.

We have all but legalized it. I served on a committee with Congressman Garcia in 1968 or 1970, the Hart committee they called it. We went to England and Japan and reevaluated. The reason for that committee was due to the fact that they found out that marijuana is now being used by middle class suburbia, if you want to use that term, not our community.

So now we are going to change the rules. It reduced the penalties for small quantities of marijuana to the point, now, where it is almost legalized anyway.

It is a deferred kind of prosecution. I went off on a tangent. Let's get back to the bill. This is what we proposed.

We feel strongly about it. I differ in some instances about maintenance. Once we put in blocks and maintenance, we have a whole other set of facts in the bag.

This is what we are suggesting. I think this is great that we are talking out it. Whether it happens today or tomorrow, I doubt it, but it is something that we have started canvassing.

Our community is canvassing this great country of ours. To your credit, you started this. Whatever the motivation, whether to kill it or not, at least we are having the hearings.

That is good.

Mr. RANGEL. Mr. Guarini.

Mr. GUARINI. Senator, we were told people who take a drug will want more of it to get a higher high all the time, the more they use drugs, the more they need drugs. If they get to a point where they cannot afford these drugs, wouldn't you agree that they would have to resort to other means of obtaining drugs through crime, muggins, robberies?

Wouldn't that exacerbate our crime problem in this country?

Mr. GALIBER. If you go the syllogistic route, it depends upon your premise. That is eliminating an extremely important factor.

Mr. GUARINI. If you accept it as a medical testimony.

Mr. GALIBER. I don't accept it as such. I am not a doctor. I am trying to answer your question.

What I am suggesting is that it is not necessarily so that all these drugs are progressive drugs. Also you will be leaving out another factor which is built in and that is monies for the various modalities and the treatments.

We are not leaving folks hanging out there. Those persons here this morning were fortunate persons because they had the strength and energy and plus to survive.

I have worked in the modality centers, in Riverside Hospital for six years in the evening. One of my staff persons was a patient there today. He survived.

What I am suggesting is that it is not necessarily so. But if the procedure that I have proposed here is such, then that person can go by. The alcoholic is the same way. If the alcoholic starts off with a pint, then it is two or three and what we have done with alcohol and smoking, which has been declared a health problem, we have not declared narcotics a health problem.

Once we declare it, we find people not smoking any longer, we find even drug wars notwithstanding the fact that it was socially acceptable.

In the last five years, we in this country have the toughest driving-while-intoxicated laws in the entire world. I am proud of our State and your State also because we have increased the penalties.

It is not that that solves anything, but we are recognizing the problem and we have educational programs. When someone says "say no to drugs", the educational programs then will work.

Mr. GUARINI. I think we agree we need more education and treatment. On that we will not differ.

Can you share with us whether or not you have taken a poll of whether the people have a sentiment?

Mr. GALIBER. I have not taken a poll but in all candor I have spoken with many high school students with regard to this matter and perhaps out of some of the frustration that we hear, there is not that much of a serious objection.

But the parents I have spoken to in all candor are strongly opposed to the notion of legalizing drugs. But then my constituents are in favor of the death penalties in my community.

Mr. GUARINI. So you would have farmers grow coca leaf and poppies. You would have our factories and free marketplace produce and refine more pure and stronger drugs and you would put then into stores where they would be available to everybody.

Mr. GALIBER. We do the same as we do with alcohol.

Mr. GUARINI. Would we export it?

Mr. GALIBER. Do we export liquor?

Mr. GUARINI. To other countries?

Mr. GALIBER. Keep in mind we are not even talking about a national bill. We are talking about a State piece of legislation. It is not national.

Mr. GUARINI. But the concept is the same.

Mr. GALIBER. It could very well be but that is left in your hands. You have treaties I heard very much about today to deal with. You have the obligation of interstate commerce.

Mr. GUARINI. So like General Noriega, you would export drugs to other countries. Aren't you concerned about the public image America would have if it got involved in the legalization of the international trafficking of drugs?

Mr. GALIBER. Again, you are adding a dimension that may or may not be so. To turn to, say, Panama and suggest the general there, I am not quite sure how he got into business. The fact of the

matter is that there is a profit involved and that is why he is exporting.

It is the kind of profit where one dollar, it has been told and we can use statistics any way we wish, it has been mentioned that one dollar in an illicit drug market brings back $5,000. If that is so, someone will take a shot.

Mr. GUARINI. Do you believe this will actually bring down health costs in our country?

Mr. GALIBER. It may do that, it may not. On one hand this, on the other hand that.

Mr. GUARINI. That is not much of a positive answer. Do you believe it will bring down crime?

Mr. GALIBER. I know so. On the health question also, this bill, the bill that was proposed, is just like those proposed in Congress. We don't have all the answers, the few of us who are supportive of the bill or supportive of the notion.

We don't have all the answers, but we say by the very same token and not being critical because it is not an angry kind of setting we are in, we are all frustrated and looking for answers, hopefully we can find some answers.

Mr. GUARINI. That is why I asked if you thought it would get rid of underground and there would be no black market of drugs whatsoever.

Mr. GALIBER. I believe it would certainly be minimized because if you can buy it, then you don't have to go on a Sunday afternoon when they used to sell the pints around town, they used to do it at that particular point in time with alcohol. It doesn't happen any longer.

The black market comes as a result of an attempt, for example, in 1914, what happened in those days was that the health department sold it, they dispensed it in city hall, just as the methadone clinics do now.

Mr. GUARINI. Should this be available to the military?

Mr. GALIBER. Is alcohol available?

Mr. GUARINI. So you feel the military should have complete use to open drugs?

Mr. GALIBER. I didn't say that. I have been around too long to answer those questions.

I didn't say that.

Mr. GUARINI. Do you think this would bring families together.

Mr. GALIBER. I think of methadone and I think that any treatment that is available has the possibilities of bringing families back together. It may be the possibilities of not breaking them up.

Mr. GUARINI. Would this give America a better sense of values by having this kind of a law?

Mr. GALIBER. Does it give America any more value by selling alcohol?

Mr. GUARINI. Does a question answer a question?

Mr. GALIBER. Sometimes.

Mr. GUARINI. So you think this is just another alcohol situation?

Mr. GALIBER. No, I said that in order to make it simplistic, to make the analogy simple wherever you think of legalizing narcotics, think of alcohol.

Mr. GUARINI. At nighttime you can't buy alcohol. What does the drug addict do? Are you going to have them open seven days a week, 24 hours a day so there will be day and night availability for all kinds of drugs people want?

Mr. GALIBER. You are asking two questions. What does one do at night when you don't have? Do they commit crimes or go buy it? If it is liquor, you take a bottle home with you over the weekend.

The application in the bill is tough, there is no question about it, because as someone mentioned today, Dr. Musto suggested, when you start talking about maintenance, one as opposed to the other, you are creating a new problem. There is enough problems in the notion that we are hearing about this for the first time in my lifetime, at least hearing, talking and debating another approach.

Mr. GALIBER. Thank you for your consideration.

Mr. GUARINI. Thank you for yours, sir.

Mr. RANGEL. Mr. Dornan.

Mr. DORNAN. Senator Galiber, if there was a hall of fame for legislators or former legislators, you would be a prime candidate.

You are about as good a witness pro or con, up or down, on either side as I have seen.

You are going to end up being the point man for this whole issue of legalization. I am not going to state that you are articulate. That is so self-evident, it is understated. But you are so thoughtful on this issue and so good as a legislator and a witness that you are ready for every ball, no matter what direction it comes from when we throw it at you.

Let me ask you about designer drugs, to go to a specific area. I don't know how any governmental entity anywhere could write any law when there are people in this narcotic culture that are busy in the labs, and that takes a good intellect, knowledge of chemistry, creating new substances all the time, to alter consciousness in this God-given computer of ours called a brain.

You have a good one in your noggin. How do you control designer drugs?

Mr. GALIBER. Take the profit out of it, it wouldn't make any difference. You write laws when there is something, I believe—at least we do, sometimes in the State of New York, not always, but sometimes, we write laws because it is brought to our attention that there needs to be a regulation to prohibit something or do something else with it.

I am saying to you simply, Congressman, that the designer drugs, in my judgment, not being a doctor but being merely a legislator from the South Bronx.

Mr. DORNAN. Who has to write the law for the doctors?

Mr. GALIBER. Yes, who is not a limousine liberal, as you suggested, but an asphalt participant.

Mr. DORNAN. I love it. I will use that quote.

Mr. GALIBER. I am not always right, but I believe that if we take the profit out, you won't have persons out there trying to make up some designer drugs. There may be a small segment, however.

I think medical doctors, often psychiatrists, are more prepared to deal with this matter. I have been told that there are a certain number of folks in our community who are addictive-prone, who will be addicted to something no matter what. I am saying in the

bill the combination of taking the profit, the motivation out, taking that money and putting it into the modalities which I understand you passed in a bill the other day and I don't think there is much money out there.

The same thing happened in the State of New York. We have not been doing anything at all. We closed up the two Federal hospitals as we mentioned before. Congressman Rangel, your community and my community used to send folks to Lexington, Kentucky. Four months and 15 days after, they were back out to the street.

We used to reduce the habit, no modalities, no training, no education. The first modality in the City of New York: 1952, Riverside Hospital. Before that it was Narcotics Anonymous.

I was privileged to serve on the board. That is all we had.

Then when we had the modalities. For the first time in New York City politics got involved and we lost that.

It was a wonderful modality. The Governor, out of frustration because there was such a small percentage of arrests, suggested that we give life in prison, no parole. Now we have an extension.

We are also saying not only the supplier, but also the users. We are going to take them out of society, too. We are going to deal with the users, put them on an island, I am not quite sure what the procedure is.

But I am suggesting simply that that is what has been thrown out by a few of us and not in favor. I am going to invite you up to New York, when I have my hearings, because we are going to have some hearings, but we might keep a bit of an open mind about the subject matter.

Mr. DORNAN. I will come up and I will ride in police cars all night, the night before to get a feel for the horror in the streets.

Mr. GALIBER. There are white and black areas in my senatorial district. When you ride, please ride in some white communities as well because you will find some problems there also.

Mr. DORNAN. I agree.

I would like to throw two spitballs at you. You have been forthright enough, I know you will answer. It lends itself to problem solving and taking tough means to do it but also problems that involve human evil and frailty that are aligned to this.

Before that, I want to suggest maybe our chairman lead a delegation to a city that will cause us criticism. He has a safer seat than I do so I will take more heat. I never get criticized when I go to Hanoi, Managua, Burundi, Ethiopia to see starvation or any place around the world.

But when you hit London, Paris, Rome or Hawaii, you get press criticism. I would like to go to Hawaii. I would like to take you with us.

I think we ought to go to London and on the scene hear about all the experiences with the methadone program about whether it worked or it did not.

I read it didn't work. Next day I see somebody say they use it and it relieved some of the horror. I think if we go to some hospitals and find out about it maybe we can put these divergent views to rest.

Mr. DORNAN. Are you for legalizing prostitution?

Mr. GALIBER. Am I for legalizing prostitution?

Mr. DORNAN. Different subject, same parameters.

Mr. GALIBER. I have the answer, I am just trying to think of the answer I gave to someone in the debate about five years ago. I believe that the legalization of prostitution is a good possibility, just as the question of the other place syndrome.

Mr. DORNAN. Take some of the profit out of it?

Mr. GALIBER. No, we are not talking about the same thing. Maybe we are coming from an altogether different perspective and maybe I shouldn't even try to answer. I just thought perhaps this is one of the liberal views that you have alluded to before, and being dubbed not a liberal necessarily, I might be able to answer a question which has very little relevancy, in my judgment, to legalizing drugs.

Mr. DORNAN. Let me interrupt before you finish and let me take some of the slide off the ball.

Mr. GALIBER. Good.

Mr. DORNAN. Whenever I have discussed this issue I have always started with the question: We are not talking about your daughter or mine, your mother's memory or mine, or our nieces or anybody we like. When we talk about legalizing prostitution, we are talking about some young kid somewhere who never had a father, a male influence in her life, or she is from some barrio, some ghetto, some lower socioeconomic level, or maybe some runaway kid from Minnesota who ends up on the Minnesota Strip in Manhatten. It is always somebody else.

In this issue, when we talk about the impact of legalization, I find myself thinking it isn't going to be my daughters we are talking about, or my grand kids, because I play a role in their lives, and it always ends up impacting on somebody else's daughter whose father was never there when she needed him.

Mr. GALIBER. let me assure you of one thing. In my judgment, we would not be facing each other here today on this date talking about this subject matter if the premise you used was not wrong. It has now moved out. At one time we could argue, and I did with Congressman Rangel, it was genocide, you are destroying our community, in particular our black community, and we said it was the urban center.

We are here today, Congressman, because the problem has gotten so bad and it has spread way out into suburbia and threatens to spread way out into liberal, conservative, Republican—whatever we have, right to live, if you will, areas.

Mr. DORNAN. So it is all our sons, all our daughters?

Mr. GALIBER. Are all in jeopardy, in my best judgment. That is how bad this drug situation is.

Mr. DORNAN. Good answer.

Scondly—final one, and I am not bleeding it because I haven't the foggiest idea what your response is going to be.

If Senator Galiber knelt down beside his bed at night and an angel visited him and said, here is a guy, Mr. Ledher, or Mr. Herrara, from the Mexican gang, which I can tell you on authority of the boss that this man is responsible for the death of 19,281 people. Would you give that Mr. Ledher capital punishment?

Mr. GALIBER. I would send the angel back to God and let him deal with it.

Mr. DORNAN. You are not for capital punishment?

Mr. GALIBER. You got it.

Mr. RANGEL. I have been trying to think for a long time how a person as dedicated and hard working as Senator Galiber could come up with a bill like this, and Joe, I just figured it out. What you are doing is not introducing legislation that you think is going to pass the New York State Legislature, no more than you would introduce that bill during prohibition just to have alcohol legal in the State of New York.

You are not introducing a bill to have drugstores selling narcotics knowing that we have been hit so hard with these liquor stores and bars in your district that all you have to do is double them up with narcotics bars and stores and it really would be genocide, and the end of hope and life for our constituents.

What I think you are doing, and I will accept your bill in that vein, is sending a message to America that unless we are prepared to do something about this drug problem, that unless we are prepared to eliminate this poison from entering into the United States, educating our youngsters as to the dangers, but even more importantly from your view and my view, to make certain in this great democracy of ours we have equal opportunities so that people don't have to look to alcohol and to drugs as a final way out, that what you are doing is saying that yes, there is frustration out there, that we haven't fought any war, that we are not dealing with the problems of the homeless, of the jobless, and the hopeless, and that perhaps if people could see just how this frustration can reach the point that a member of the New York State Senate can drop a bill and say hey, let's give up on this and let's make it available, that it may be we can shake some sense of reality in there.

I liked the response you gave to Congressman Dornan and because in 1970 when I came here, they were talking about drugs. They would look at me like it was a Rangel problem, you know. It was Harlem, it was Brooklyn, it was South Bronx. And you are right. Yesterday you heard the testimony of Carol Campbell from Kentucky, a rural area, saying they have been hit, too. So maybe you are letting them know what the liquor has done to our community, maybe the stores will be open in their communities and maybe then they will see their children dying as we have seen so many of our kids giving up and killing themselves instead of just police brutality.

It took a lot of courage and believe me, I will be at your hearings. You are an articulate spokesman and you have hit what you want to hit right square in the middle. I don't have to deal with those mumblers that say let's debate and then I can't find them, or other ones that say I think we ought to have a discussion, and then they want a commission or other people who say well, this is my idea, now you and the Congress refine it.

Oh no, Senator, you have said I have legislation, I stand behind my legislation, these are my ideas, and I don't think that we want to go around the country together as some of these people who sell books, or to get on talk shows or television, which is important, but I think that you have sent your message out. It is going to be published, as well as our responses.

I am not going to say it takes a lot of courage of course, because that I think implies what I think of the legislation. But, on the other hand——

Mr. GALIBER. Just have the courage to put it right, Congressman.

Mr. RANGEL. You have introduced a pretty unpopular piece of legislation. I think all of us that serve in legislative bodies have that intellectual and political respect of those people that just don't talk about doing something, but do it. I hope, I hope that this sharpens the discussion as we relate to it, and I, for one, Congressman, Dornan, won't have to worry about people with maintenance centers and I don't have to worry—I do hope you have some provisions in there so the addict who can't afford to get to that store, we provide some funds or some funding program so we can really hit this head on, where they get cocaine stamps, heroin stamps, maintenance stamps, or medicaid coverage, but you are not going to leave them out like the wino without getting access.

I thank you for your testimony.

Mr. GALIBER. And, Congressman, I want to know, as I leave and catch a shuttle back to the South Bronx, that we want the same thing. We want an end to this, horrible, horrible, horrible problem. We have personally dealt with this over 25 years. I can recall the hookup in London.

[The information follows:]

SENATOR JOSEPH L. GALIBER

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

AMERICA WAS CONCEIVED IN, AND HAS REMAINED, THE NOBLE EXPERIMENT, THE SHINING BASTION OF LIBERTIES AND FREEDOMS FOR ALL THE WORLD TO EMULATE, FOR ALL THE WORLD'S CITIZENS TO STRIVE FOR AND OBTAIN. NOW, IN AN ERA WHEN OTHER NATIONS ARE INDEED EMULATING AMERICAN'S CRAVING FOR FREEDOM, RISING FROM CHAINS AND OPPRESSION TO SHAKE THEIR FISTS AT ANCIENT MONOLITHS, AMERICAN OFFICIALS HAVE BEGUN TO ESPOUSE RANK VIOLATIONS OF OUR CIVIL LIBERTIES AND FREEDOMS...AND THIS OUT OF FRUSTRATION.

I REALIZE, OF COURSE, THAT THESE WELL-MEANING OFFICIALS SAY THAT THEY ARE RAISING THEIR VOICES FOR THESE DRASTIC MEASURES TO COMBAT A MOST PERVASIVE DISEASE, WORSE THAN CANCER, WORSE THAN AIDS: THE PROLIFERATION OF DRUG USE.

BUT THESE OFFICIALS MUST SEE, IF THEY , IF WE, EVER HOPE TO COMBAT DRUGS, THAT THEIR EVERY EFFORT TO ESCALATE THE WAR AGAINST DRUGS IS, AT THE SAME TIME, A CONCESSION THAT THE WAR IS BEING LOST. THAT THEIR INCURSIONS INTO CIVIL LIBERTIES ARE AS DANGEROUS TO OUR VERY FOUNDATIONS AS THEY ARE IMPORTANT TO COMBAT THE PROBLEM IN LIGHT OF WHAT MUST INEVITABLY OCCUR.

WHAT WE MUST INEVITABLY DO, GENTLEMEN AND LADIES, IS TO ELIMINATE DRUG TRAFFICKING THROUGH THE LEGALIZATION OF NARCOTICS.

II

I REALIZE THERE ARE SOME WHO HEAR MY WORDS AND LOOK AT ME AS I SIT BEFORE YOU, THINKING SUCH AN IDEA PREPOSTEROUS, INCONCEIVABLY SIMPLISTIC AND NAIVE, A MONSTROUS IMMORALITY.

AS EACH AND EVERY DEVICE, PLAN, EXPENDITURE, INTERDICTION THROWN INTO OUR BREASTWORKS FAILS TO HOLD THE DELUGE OF WATER FROM ROLLING DOWNHILL, I SUGGEST TO YOU THAT YOU MARK MY WORDS,...LEGALIZATION, THE PROPER CHANNELING OF THE DELUGE, THE TREATMENT AND CALMING OF THE WATERS, IS NOT ONLY THE ONLY SOLUTION, IT IS INEVITABLE.

AND SO SHOULD IT BE!

WHEN, IN THE NAME OF FIGHTING THE WAR AGAINST DRUGS, RESPONSIBLE OFFICIALS SUGGEST ARMING OUR POLICE WITH MORE POWERFUL AUTOMATIC WEAPONS, THE BETTER TO ESCALATE THE WARFARE IN OUR STREETS; WHEN OFFICIALS SUGGEST THE INTERDICTION OF, AND SHOOTING OUR OF THE THE SKY OF SUSPICIOUS PLANES - I SAID "SUSPICIOUS PLANES"; WHEN PRESIDENTIAL CANDIDATES CALL FOR DOUBLING THE MONUMENTAL NUMBERS AND COSTS OF AGENTS TO BE THROWN INTO THOSE DEFENSES TRYING TO KEEP WATER FROM COMING DOWNHILL; WHEN PLANS ARE MADE FOR MARTIAL LAW TO BE ENFORCED IN THIS CAPITAL OF OUR REPUBLIC; WHEN THE DRUM BEAT FOR DEATH PENALTIES FOR DRUG TRAFFICKERS ARE BEING POUNDED BY OTHERWISE SANE AND SOBER LEADERS, WHEN ALL THIS IS BEING ESPOUSED DESPITE THE FACT, AND EACH AND EVERY ONE OF YOU KNOW THAT THE PROFESSIONAL, CLEAR, AND UNANIMOUS OPINION OF ALL THOSE ENGAGED IN THE FRONT LINES OF THAT WAR, IS THAT WE ARE LOSING THAT WAR, THAT WE ARE FALLING BACK FURTHER EACH DAY,... THEN I SAY YOU

III

MUST SIT BACK NOW, RIGHT NOW, IN YOU CHAIRS, AND LET THIS MESSAGE FLOW OVER YOU LIKE WATER FROM A WATERFALL.

IT WON'T HURT, YOU CAN HANG TENACIOUSLY TO YOUR OUTMODED CONCEPT OF FIGHTING THE LOSING WAR, BUT AT LEAST HARKEN TO REALITY.

THERE IS A VERY SIMPLE REASON WHY EVERY PERSON ENGAGED IN THE FRONT LINES OF THE WAR HAS REPORTED THAT THE WAR IS BEING LOST. MILLIONS OF OUR CITIZENS ARE USING THOSE DRUGS. EVERY DAY, ...RIGHT THIS VERY MINUTE. ALL OVER THIS COUNTRY, PRIVATE CITIZENS ARE USING DRUGS, BUYING DRUGS, CRAVING DRUGS.

NO ONE CAN SERIOUSLY SUGGEST THAT ALL THE DRUGS THAT ARE SMUGGLED INTO THIS COUNTRY EVERY DAY ARE BEING STORED SOMEWHERE IN A VAST UNDERGROUND CAVERN, UNWANTED, UNUSED.

HARDLY! THEY ARE BEING USED. SOME ESTIMATES HAVE THE PERCENTAGE OF CITIZENS OVER THE AGE OF 21 YEARS WHO HAVE AT LEAST EXPERIMENTED WITH DRUGS TO BE OVER 40%. 40% OF OUR CITIZENS!

THE DRUGS ARE BEING USED, CONSUMED, BY PEOPLE, BY CITIZENS OF THE UNITED STATES OF AMERICA. DID ONE OF OUR PRESIDENTIAL CANDIDATES SAY THAT OUR NATION, WITH 1/5 OF THE WORLD'S POPULATION, USES (CONSUMES) 50% OF THE COCAINE IN THE WORLD?!

DID ANOTHER OF OUR PRESIDENTIAL CANDIDATES SUGGEST THE ROAD TO SOLUTION IS A CHANGE IN VALUES, EDUCATION...YES INDEED, TREATMENT, REHABILITATION, A DIMINUTIVE OF THE CRAVING, THE NEED, THE DESIRE, THE CURIOSITY?.

IV

WILL SHOOTING SUSPICIOUS PLANES OUT OF THE SKY, AND FLAYING AND QUARTERING EVERY PERSON WHO DEALS DRUGS MAKE THIS CRAVING BY OUR CITIZENS FOR THE WHITE DREAM DISAPPEAR?

YOU CAN HOPE IT MIGHT. BUT, REALISTICALLY, AN ARREST OF A DEALER DOES VERY LITTLE FOR THE EXPERIMENTER, THE USER, THE ADDICT.

AND, SURELY, IN SUCH A LUCRATIVE FIELD, OTHERS WILL AND ARE WILLING TO STEP INTO THE BREACH TO SUPPLY DRUGS FOR VAST PROFIT.

WHAT WE HAVE, WHAT WE ARE TALKING ABOUT HERE, WHAT I AM TALKING ABOUT, IS THAT WE HAVE TWO, TWO VERY DIFFERENT AND VERY REAL PROBLEMS.

PERHAPS THAT IS THE DOWNFALL OF OUR PRESENT EFFORTS TO STEM THE TIDE OF DRUGS.

MOST FAIL OR REFUSE TO RECOGNIZE THE INDEPENDENT COEXISTENCE OF THE TWO PROBLEMS: DRUG ABUSE AND DRUG TRAFFICKING.

IT IS THE DRUG TRAFFICKING THAT CAUSES DEATH IN THE STREETS, SHOOTINGS, WHICH WE SPEND MONEY TO PREVENT, THE COAST GUARD, SHIPS, PLANES, AGENTS, SPRAYING CROPS IN FOREIGN COUNTRIES, INTERNATIONAL INTRIGUES, INTERNATIONAL CONVOLUTIONS OF NATIONAL IMPORT. ALL THAT DEALS ONLY WITH THE TRAFFICKING.

NOW, IF BY A SIMPLE EXPEDIENT, WE COULD ELIMINATE ALL DRUG TRAFFICKING, ALL DRUG TRAFFICKING, SO THAT OUR NATION MIGHT TURN ITS ATTENTION TO THE PROBLEMS OF OUR CITIZENS, TURN OUR RESOURCES AND EFFORTS TO HELPING OUR CITIZENS,

WOULD THAT NOT INDEED BE THE POSITION, THE PLATEAU WE SHOULD DEVOUTLY DESIRE.

I ASSURE YOU, AND AS YOU LISTEN, YOU KNOW THAT THESE WORDS ARE TRUE. IF BY MIDNIGHT TONIGHT WE WERE -JUST BEAR WITH ME WITH OPEN MIND- IF BY MIDNIGHT TONIGHT, WE WERE TO LEGALIZE NARCOTICS, GIVE IT AWAY, FREE, TO THOSE WHO NEED IT, DESIRE IT, IN HOSPITALS, UNDER CONTROLLED CIRCUMSTANCES, THEN I SAY TO YOU, NOT A PLANE, NOT A BOAT, NOT A COURIER WOULD COME TO THIS COUNTRY, BEGINNING AT ONE MINUTE AFTER MIDNIGHT.

WHY? YOU KNOW THE ANSWER. <u>THE PROFIT IS GONE.</u>

AND SO, INSTANTLY, WITHOUT ANYTHING FURTHER, THE MOST VIOLENT OF OUR PROBLEMS: DRUG TRAFFICKING WOULD STOP.

OF COURSE, THAT WOULDN'T ELIMINATE DRUG ABUSE. BUT RIGHT NOW WE HAVE HORRIBLE PROBLEMS OF DRUG TRAFFICKING AND ALL THE VIOLENCE THAT GOES WITH IT. <u>AND</u> WE HAVE DRUG ABUSE! BUT WOULD WE NOT BE BETTER OFF IF WE COULD CAREFULLY, THOUGHTFULLY THROW OUR EVERY EFFORT INTO ERADICATING DRUG ABUSE ONLY.

NOW, THE COMMITTEE ASKED WHAT WERE CALLED 'KEY QUESTIONS' AS TO WHAT DRUGS WOULD BE LEGALIZED, WHO WOULD BE ELIGIBLE TO OBTAIN THE DRUGS THAT WOULD BE DISPENSED OR AVAILABLE, WHO WOULD MANUFACTURE THEM, GROW THEM.

THINK OF THE NARCOTICS INDUSTRY ALONGSIDE THE ALCOHOL INDUSTRY...AND ALCOHOL, FOR ALL THOSE WHO REFUSE TO ADMIT IT, IS OUR MOST ABUSED DRUG... AND IT'S AVAILABLE EVERYWHERE. IF YOU MEASURE DRUGS BY EFFECT OR INFLUENCE ON

VI

THE MIND AND BODY, THEN TOBACCO ISN'T A SHABBY CONTENDER FOR THE PRIZE OF MOST ABUSED SUBSTANCE.

TO ANSWER THE KEY QUESTIONS OF THE COMMITTEE, BY THINKING OF THE ALCOHOL INDUSTRY, THE ANSWER BECOMES AUTOMATIC. FOR EXAMPLE:

Q: WHAT NARCOTICS AND DRUGS WOULD BE LEGALIZED?

A: ALL!

Q: WHO WOULD BE ALLOWED TO BUY THESE NARCOTICS? WOULD THERE BE AN AGE LIMIT?

A: THE SAME LIMITATIONS AS THOSE FOR PURCHASING ALCOHOL.

Q: WOULD WE SELL DRUGS TO PEOPLE WHO JUST WANT TO EXPERIMENT AND ENCOURAGE THEM TO PICK UP THE HABIT?

A: WE WOULD SELL DRUGS IN THE SAME FASHION AND WITH THE SAME RESTRICTIONS AS THE SELLING OF ALCOHOL.

Q: WHERE WOULD THESE DRUGS BE SOLD?

A: IN THE SAME PLACES AND UNDER THE SAME CONTROLS AS ALCOHOL.

Q: WHERE WOULD WE OBTAIN OUR SUPPLY OF THESE LEGAL DRUGS?

A: IN THE SAME WAY THAT THERE ARE MANUFACTURERS OF ALCOHOL.

VII

DO YOU, FOR ONE MINUTE, THINK THE TOBACCO INDUSTRY HAS NOT PUT TOGETHER, LONG AGO, CONTINGENCY PLANS TO PRODUCE MARIJUANA CIGARETTES WHEN LEGALIZATION BECOMES A REALITY.

Q: WOULD PRIVATE INDUSTRY BE ALLOWED TO PARTICIPATE IN THIS MARKET?

A: OF COURSE. IN THE SAME WAY AS IN ALCOHOL.

Q:IF DRUGS WOULD BECOME LEGAL, WOULD WE ALLOW PILOTS, RAILROAD WORKERS AND NUCLEAR PLANT EMPLOYEES TO USE THEM?

A: DO WE PERMIT THEM TO USE ALCOHOL?

Q: IF DRUGS WERE LEGALIZED, HOW WOULD WE BACK UP OUR ARGUMENT WITH OUR CHILDREN AND YOUTH THAT DRUGS ARE HARMFUL.

A: IN THE SAME WAY THAT WE DO WITH ALCOHOL.

EVERY QUESTION CAN BE ANSWERED IN THE SAME FASHION AND IT IS NOT A MYSTERY THAT IT CAN BE DONE. NOR IS IT A MYSTERY THAT IT **SHOULD** BE DONE.

WE SHOULD TREAT NARCOTICS ADDICTION. WE SHOULD SPEND OUR MONEY TREATING CITIZENS, CURING THEM OF THIS DISEASE. BUT WHAT, INDEED, DOES THAT HAVE TO DO WITH ELIMINATING DRUG TRAFFICKING IMMEDIATELY?

THE VOLSTEAD ACT, WHICH MADE LIQUOR ILLEGAL, CREATED VIOLENCE, WARFARE, BLOODSHED, CORRUPTION, ILLICIT DEALERS AND SELLERS ON A SCALE THAT WAS UNPRECEDENTED... <u>UNTIL NOW.</u>

VIII

AND THEN LIQUOR WAS LEGALIZED. AND WHEN IT WAS LEGALIZED, I ASK YOU, DOES ANYONE KNOW A BOOTLEGGER RUNNING AROUND THE STREETS SUPPLYING THEIR ILLICIT CONTRABAND? ARE PEOPLE WORRIED ABOUT DRUNKS MUGGING THEM IN THE STREETS OR BREAKING INTO THEIR APARTMENT TO GET FUNDS TO BUY A PINT OF WINE?

WE NOW DEAL WITH ALCOHOLIC ABUSE AS A MEDICAL PROBLEM. LET US PROCEED INTO THE FUTURE TO DEAL WITH THE DRUG PROBLEM IN THE SAME WAY.

BUT, LET US NOT REPEAT THE MISTAKES OF THE PAST BY CONTINUING TO ESCALATE A WAR WHICH IS TOTALLY UNNECESSARY.

I GUARANTEE, AND IN YOUR HEART'S HEART, YOU EACH KNOW, THAT IF YOU LEGALIZE DRUGS, TRAFFICKING WOULD STOP IMMEDIATELY.

YOU WOULD THEN ONLY HAVE ONE PROBLEM TO FIGHT.

GRANTED, IT IS A VAST PROBLEM.

JUST AS ROBERT KENNEDY OPINED, ...'IF THE ALTERNATIVES WERE DISORDER OR INJUSTICE, THE RATIONAL CHOICE IS INJUSTICE. FOR WHEN THERE IS DISORDER, WE CANNOT OBTAIN OR MAINTAIN JUSTICE.

SO TOO HERE, WHEN THE DISORDER AND TURMOIL OF DRUG TRAFFICKING SURROUNDS US, WE HAVE NO CAPACITY TO -AND WE ARE NOT- DEALING WITH THE DRUG PROBLEMS OF OUR CITIZENS.

WE MUST ELIMINATE TRAFFICKING, AND DEAL WITH ADDICTION AND HELP OUR CITIZENS, NOT ESCALATE A WAR WHICH WE ARE LOSING AND WHICH THREATENS A LIBERTY OUR NATION AND OUR VERY EXISTENCE.

MEMORANDUM

March 29, 1988

To: All Senators

From: Senator Galiber

Re: Decriminalization of the State's Drug Laws

I plan to introduce a bill to decriminalize the possession, distribution, sale and use of all forms of controlled substances. I don't believe the "War on Drugs" is being won. As long as there is a demand for drugs, any government interdiction is bound to be insufficient. Only if we legalize these substances, in a manner similar to Alcoholic Beverage controls, can we make any progress towards eliminating the criminal factors associated with drug use and distribution.

My bill, which is still in the drafting stages, would fully decriminalize drugs. The possession, distribution, sale and use would become legal. However, a State Controlled Substances Authority, similar to the State Liquor Authority, would be set up. This Authority would issue licenses to doctors, pharmacists and chemists to sell these drugs. Thereby, any adult desiring these drugs would simply go to his or her local doctor or pharmacist; a prescription would no longer be necessary. Isn't this better than going to his or her local street-corner pusher? The Authority would then regulate the prices, quality control and could tax these drugs. This bill, like the repeal of Prohibition, would eliminate the crime and corruption associated with drugs, reduce the inflated costs, and enable our government to redirect its $10 billion dollar annual allocation for fighting drugs to education about drug abuse and treatment for addicts. In addition, taxes could now be collected on this huge industry.

I would appreciate if you would take the time to look through the attached support materials. Certainly this bill is not cast in stone, and I would truly value any comments, ideas, or input you may have. In addition, I would like to see a Commission or Task Force set up to fully study this matter.

PRESS RELEASE

from STATE SENATOR
JOSEPH L. GALIBER
31st DISTRICT BRONX

For Release: April 18,1988
Contact: Matthew D. Nafus
(518) 455-2061
(212) 828-9303

GALIBER INTRODUCES BILL TO DECRIMINALIZE DRUGS UNDER THE CONTROL OF A STATE CONTROLLED SUBSTANCES AUTHORITY

Today State Senator Joseph L. Galiber introduced legislation to decriminalize the possession, distribution, manufacture, use and sale of all controlled substances and to set up a State Controlled Substances Authority to provide for the legal control of these drugs.

Like the Alcoholic Beverage Control Law of 1934, the purpose of this bill is to regulate and control the manufacture, sale and distribution within the state of controlled substances for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to law. "Obviously," commented Senator Galiber, "there is today little or no regulation or control of these drugs, no temperance in their use and no respect for the law by both users and dealers."

The bill adds a new article 21 to the executive law. A State Controlled Substances Authority, similar to the State Liquor Authority, consisting of five members who can issue, refuse, revoke or cancel licenses for the legal sale and manufacture of controlled substances. The Authority will fix standards of quality control, product specifications, labeling, quantitative limits for controlled substances and keep records on licenses granted, denied or revoked.

Any professionally licensed doctor or pharmacist may apply for a license to legally sell controlled substances. However, no doctor or pharmacist will be granted a license if their office or place of business is within two hundred feet of a school, church, synagogue or other place of worship. Applicants must be of good moral character, possess sufficient capabilities to carry out the activity described in the application, maintain effective control against the diversion of the controlled substances and comply with all applicable state and federal laws and regulations. It will be illegal to

sell, give, procure or deliver any controlled substance to a person under the age of twenty-one, and it will remain illegal to sell or distribute drugs in or near school grounds.

Articles 220 and 221 of the penal law, provisions dealing with the sale and possession of controlled substances and marijuana, are repealed by this bill. Article 33 of the public health law, which is the schedules of controlled substances, is repealed and added to this bill.

Senator Galiber stated that "our great effort to fight the war on crime has not been successful. We have 23 million Americans using drugs every month, 824,000 drug related arrests annually, at least 750 murders each year attributable to drugs, the escalating growth of organized crime and drug cartels and pervasive corruption throughout our government. We can't stop the drugs from entering our country; we can't arrest and jail everyone who uses or sells drugs; we can't treat all the addicts who need treatment; and we can't effectively educate all our children about the dangers of drugs. These things are not possible as long as there is both a demand for drugs and huge profits in meeting that demand. By decriminalizing the sale, possession, and use of controlled substances with reasonable controls, we won't end the demand but we can take the huge profits out and thereby remove the heinous criminal elements. Then we can attempt serious efforts in combating drugs through education and treatment."

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MEMORANDUM

Senator Joseph L. Caliber S. 8176

TITLE:

AN ACT to amend the executive law, in relation to establishing a controlled substances authority and to repeal articles 220 and 221 of the penal law, relating to controlled substances offenses and involving marijuana and article thirty-three of the public health law, relating to controlled substances.

PROVISIONS:

The executive law is amended by adding a new article twenty-one which, in the first title, creates a State Controlled Substances Authority. This five member authority is given the power: to issue, refuse, revoke or cancel licenses for the legal sale and manufacture of controlled substances; to fix standards of quality control, specifications, labeling, quantitative limits and otherwise in the manufacture and sale of controlled substances; to keep appropriate records on licenses granted, denied or revoked; and other necessary powers to adequately carry out this legislation.

Title two of the new article twenty-one lists the complete schedules of those drugs defined as controlled substances. Any professionally licensed doctor or pharmacist may apply for a license to legally sell controlled substances. However, no doctor or pharmacist will be granted a license if their office or place of business is within two hundred feet of a school, church, synagogue or other place of worship. It will be illegal to sell, give, procure or deliver any controlled substance to a person under the age of twenty-one, and it will continue to be illegal to sell or distribute drugs in or near school grounds. This title also provides the procedures for revocation and suspension of a license to sell or manufacture controlled substances and appropriate violations and penalties.

Title three of the new article twenty-one specifies the application requirements for a license to sell or manufacture controlled substances. Applicants must be of good moral character, possess sufficient capabilities to carry out the activity described in the application, maintain effective control against the diversion of the controlled substances and comply with all applicable state and federal laws and regulations. This title also provides for the identification of controlled substances by an individual symbol or number and for the proper record keeping of controlled substances sold, distributed or manufactured by a licensee.

Title four empowers the Controlled Substances Authority to grant licenses to persons to engage in research, instructional activities and chemical analysis relating to controlled substances, provides for the application procedure and for record keeping and reports.

Lastly, this bill repeals Article 220 of the penal law which deals with the criminal possession and sale of drugs. Article 221, offenses involving marijuana, is also repealed as well as Article 33 of the public health law which deals with control of narcotics, depressants, stimulants and miscellaneous drugs.

STATEMENT IN SUPPORT:

Like the Alcoholic Beverage Control Law of 1934, the goal of this bill is to regulate and control the manufacture, sale and distribution within the state of controlled substances for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to law. Obviously, there is today little or no regulation or control of these drugs, no temperance in their use and no respect for the law by both users and dealers.

Our great effort to fight the war on crime has not been successful. We have at least 23 million Americans using drugs every month, 824,000 drug related arrests annually, at least 750 murders each year attributable to drugs, the escalating growth of organized crime and drug cartels and pervasive corruption throughout our government. We can't stop the drugs from entering our country; we can't arrest and jail everyone who uses or sells drugs; we can't treat all the addicts who need treatment; and we can't effectively educate all our children about the dangers of drugs. These things are not possible as long as there is both a demand for drugs and huge profits in meeting that demand. By decriminalizing the sale, possession and use of controlled substances with reasonable control, we won't end the demand but we can take the huge profits out and remove the heinous criminal elements. Then we can attempt serious efforts in combating drugs through education and treatment.

FISCAL IMPLICATIONS:

Indeterminate.

EFFECTIVE DATE:

This act shall take effect on the first day of November next succeeding the date on which it shall have become a law; provided, however, that the provisions of Title I of Article 21 of the executive law, as added by section one of this act shall take effect immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of the foregoing sections of this act on its effective date are authorized and directed to be made and completed on or before such effective date.

STATE OF NEW YORK

8176

IN SENATE

April 18, 1988

Introduced by Sen. GALIBER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to establishing a controlled substances authority and to repeal articles two hundrd twenty and two hundred twenty-one of the penal law, relating to controlled substances offenses and offenses involving marihuana and article thirty-three of the public health law, relating to controlled substances

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The executive law is amended by adding a new article twenty-one to read as follows:

ARTICLE 21
CONTROLLED SUBSTANCES
TITLE 1
DIVISION OF CONTROLLED SUBSTANCES

Section 555. Policy of state and purpose of article.
556. Division of controlled substances; state controlled substances authority.
557. Salaries; expenses.
558. Removal.
559. Vacancies; quorum.
560. Officers; employees; offices.
561. Disqualification of members and employees of authority.
562. Powers of the authority.
563. Oath of office.
564. Definitions of terms of general use in this article.

§ 555. Policy of state and purpose of article. It is hereby declared as the policy of the state that it is necessary to regulate and control the manufacture, sale and distribution within the state of controlled substances for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to law. It is hereby

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD14499-02-8

declared that such policy will best be carried out by empowering the controlled substances authority of the state to determine the manner and means of dispensing such controlled substances in order to promote the welfare and safety of the public. It is the purpose of this article to carry out that policy in the public interest. The restrictions, regulations and provisions contained in this article are enacted by the legislature for the protection, health, welfare and safety of the people of the state.

§ 556. Division of controlled substances; state controlled substances authority. The head of the division of controlled substances shall be the state controlled substances authority which shall consist of five members, who shall be known as commissioners and shall be appointed by the governor by and with the advice and consent of the senate, and one of whom shall be designated as chairman by the governor. Not more than three members of the state controlled substances authority shall belong to the same political party. All of said members shall be citizens and residents of the state. Such members shall be appointed to serve for a term of five years each and until their successors have been appointed and qualified. The term "controlled substances authority," wherever occurring in any of the provisions of this article or of any other law, or in any official books, records, instruments, rules or papers, shall hereafter mean and refer to the state controlled substances authority provided for in this section.

§ 557. Salaries; expenses. The chairman and the other members of the authority shall receive a salary to be fixed by the governor within the amounts appropriated therefor. Each member of the authority shall also be entitled to his expenses actually and necessarily incurred by him in the performance of his duties.

§ 558. Removal. Any member of the authority may be removed by the governor for cause after an opportunity to be heard. A statement of the cause of his removal shall be filed by the governor in the office of the secretary of state.

§ 559. Vacancies; quorum. In the event of a vacancy caused by death, resignation, removal or disability of any member, the vacancy shall be filled by the governor by and with the advice and consent of the senate for the unexpired term. Three members of the authority shall constitute a quorum for the purpose of conducting the business thereof; but a majority vote of all the members in office shall be necessary for action.

§ 560. Officers; employees; offices. The authority shall appoint a counsel, a secretary, a chief executive officer and three assistant chief executive officers and fix their compensation within the budgetary appropriation therefor. The chief executive officer and the assistant chief executive officers shall be deputy commissioners and, together with the secretary to the authority and attorneys attached to the legal staff, shall, subject to the supervision and control of the authority, exercise any of the functions, powers and duties conferred upon the authority by law which the authority may delegate to them. Each commissioner may appoint and at pleasure remove a confidential secretary. The authority shall also have power to engage necessary deputies, assistants, inspectors, and other employees within the limits provided by appropriation. Inspectors so employed by the authority shall be deemed to be peace officers for the purpose of enforcing the provisions of this article or judgments or orders obtained for violation thereof, with all the powers set forth in section 2.20 of the criminal procedure law. The counsel, secretary, chief executive officer, assistant chief executive

officers, confidential secretaries to commissioners and deputies shall be in the exempt class of the civil service. The other assistants, inspectors and employees of the authority shall all be in the competitive class of the civil service. The authority shall have its principal office in the city of Albany and may maintain a branch office in the cities of New York and Buffalo and such other places as it may deem necessary.

§ 561. Disqualification of members and employees of authority. No member of the authority or any officer, deputy, assistant, inspector or employee thereof shall have any interest, direct or indirect, either proprietary or by means of any loan, mortgage or lien, or in any other manner, in or on any premises where controlled substances are manufactured or sold; nor shall he have any interest, direct or indirect, in any business wholly or partially devoted to the manufacture, sale, transportation or storage of controlled substances, or own any stock in any corporation which has any interest, proprietary or otherwise, direct or indirect, in any premises where controlled substances are manufactured or sold, or in any business wholly or partially devoted to the manufacture, sale, transportation or storage of controlled substances, or receive any commission or profit whatsoever, direct or indirect, from any person applying for or receiving any license or permit provided for in this article, or hold any other public office in the state or in any political subdivision except upon the written permission of the controlled substances authority, such member of the authority or officer, deputy, assistant, inspector or employee thereof may hold the public office of notary public or member of a community board of education in the city school district of the city of New York. Any one who violates any of the provisions of this section shall be removed.

§ 562. Powers of the authority. The authority shall have the following functions, powers and duties:

1. To issue or refuse to issue any license provided for in this article.

2. To revoke, cancel or suspend for cause any license issued under this article.

3. To remove any employee of the authority for cause after giving such member or employee a copy of the charges against him in writing, and an opportunity to be heard thereon. Any action taken under this subdivision shall be subject to and in accordance with the civil service law.

4. To fix by rule the standards of manufacture and processing in order to insure the use of proper chemical and other component substances and methods in the manufacture of controlled substances to be sold or consumed in the state including quality control, specifications, labeling and quantitative limits on sale.

5. To keep records in such form as may be prescribed by the authority of all licenses issued and revoked within the state; such records shall be so kept as to provide ready information as to the identity of all licenses including the names of the officers and directors of corporate licensees and the location of all licensed premises. The authority may, in its discretion, with the approval of the commissioner of taxation and finance contract with the highest responsible bidder to furnish copies of the records of licenses of each class and type issued within the state or any political subdivision thereof, for any license year or term of years not exceeding five years.

6. To inspect or provide for the inspection of any premises where controlled substances are manufactured or sold.

7. To prescribe forms of applications for licenses under this article and of all reports which it deems necessary to be made by any licensee.

8. To make an annual report to the governor and the legislature of its activities for the preceding year.

9. To hold hearings, subpoena witnesses, compel their attendance, administer oaths, examine any person under oath and in connection therewith to require the production of any books or papers relative to the inquiry; to take proof and testimony concerning all matters within its jurisdiction. A subpoena issued under this section shall be regulated by the civil practice law and rules.

10. To prohibit, at any time of public emergency, without previous notice or advertisement, the sale of any or all controlled substances for and during the period of such emergency.

11. The powers provided in this section may be delegated by the authority to any member, chief executive officer, assistant chief executive officers, deputy commissioners, secretary to the authority and attorneys attached to the legal staff.

12. To promulgate such rules and regulations as shall be necessary to accomplish the purposes and powers authorized by this article.

§ 563. Oath of office. Each member of the authority shall, before entering upon his duties, take and file an oath of office as prescribed by section ten of the public officers law.

§ 564. Definitions of terms of general use in this article. Except where different meanings are expressly specified in subsequent provisions of this article, the following terms have the following meanings:

1. "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency.

2. "Concentrated Cannabis" means

(a) the separated resin, whether crude or purified, obtained from a plant of the genus Cannabis; or

(b) a material, preparation, mixture, compound or other substance which contains more than two and one-half percent by weight of delta-9 tetrahydrocannabinol, or its isomer, delta-8 dibenzopyran numbering system, or delta-1 tetranydrocannabinol or its isomer, delta 1 (6) monoterpene numbering system.

3. "Controlled substance" means a substance or substances listed in section five hundred sixty-six of this article.

4. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by lawful means and includes the packaging, labeling, or compounding necessary to prepare the substance for such delivery.

5. "Institutional dispenser" means a hospital, veterinary hospital, clinic, dispensary, maternity home, nursing home, mental hospital or similar facility approved and certified by the authority as authorized to obtain controlled substances by distribution and to dispense and administer such substances pursuant to the order of a practitioner.

6. "Distribute" means to deliver a controlled substance other than by administering or dispensing.

7. "Distributor" means a person who distributes a controlled substance.

8. "Diversion" means manufacture, possession, delivery or use of a controlled substance by a person or in a manner not specifically authorized by law.

9. "Drug" means

(a) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; and

(c) substances (other than food) intended to affect the structure or a function of the body of man or animal. It does not include devices or their components, parts, or accessories.

10. "Federal controlled substances act" means the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91-513, and any act or acts amendatory or supplemental thereto or regulations promulgated thereunder.

11. "License" means a written authorization issued by the authority permitting persons to engage in a specified activity with respect to controlled substances.

12. "Manufacture" means the production, preparation, propagation, compounding, cultivation, conversion or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging or labeling of a controlled substance:

(a) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or

(c) by a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.

13. "Marihuana" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

14. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subdivision, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw.

15. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section five hundred sixty-six of this article, the dex-

trorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

16. "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

17. "Person" means individual, institution, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

18. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

19. "Pharmacy" means any place registered as such by the New York state board of pharmacy and registered with the Bureau pursuant to the federal controlled substances act.

20. "Pharmacist" means any person licensed by the state department of education to practice pharmacy.

21. "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, or other person licensed, or otherwise permitted to dispense, administer or conduct research with respect to a controlled substance in the course of a licensed professional practice or research licensed pursuant to this article. Such person shall be deemed a "practitioner" only as to such substances, or conduct relating to such substances, as is permitted by his license, permit or otherwise permitted by law.

22. "Registration number" means such number assigned by the Bureau to any person authorized to manufacture, distribute, sell, dispense or administer controlled substances.

23. "Sell" means to sell, exchange, give or dispose of to another, or offer or agree to do the same.

24. "Ultimate user" means a person who lawfully obtains and possesses a controlled substance for his own use or the use by a member of his household or for an animal owned by him or in his custody.

TITLE II
ADMINISTRATION

Section 565. Prescriptions not necessary for controlled substances.
566. Schedules of controlled substances.
567. Exception from schedules.
568. Controlled substances license.
569. Prohibited sales.
570. Procuring controlled substances for persons under the age of twenty-one years.
571. Criminal sale of a controlled substance in or near school grounds.
572. Offense for one under age of twenty-one years to purchase or attempt to purchase a controlled substance through fraudulent means.
573. Violation of article a class E felony.
574. License fees.
575. License fees, duration of licenses; fee for part of year.
576. Revocation of licenses.
577. Revocation and suspension of license procedure.
578. Formal hearings procedure.
579. Judicial review.
580. Violations; penalties.

§ 565. Prescriptions not necessary for controlled substances. Any other law, rule or regulation but the Federal Food, Drug and Cosmetic Act to the contrary notwithstanding, no prescription shall be required

for the dispensing or use of a controlled substance, listed in section five hundred sixty-six of this title.

§ 566. Schedules of controlled substances. There are hereby established five schedules of controlled substances, to be known as schedules I, II, III, IV and V respectively. Such schedules shall consist of the following substances by whatever name or chemical designation known:

Schedule I. (a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetylmethadol.
(2) Allylprodine.
(3) Alphacetylmethadol.
(4) Alphameprodine.
(5) Alphamethadol.
(6) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl) -4-(N-propanilido) piperidine).
(7) Benzethidine.
(8) Betacetylmethadol.
(9) Betameprodine.
(10) Betamethadol.
(11) Betaprodine.
(12) Clonitazene.
(13) Dextromoramide.
(14) Diampromide.
(15) Diethylthiambutene.
(16) Difenoxin.
(17) Dimenoxadol.
(18) Dimepheptanol.
(19) Dimethylthiambutene.
(20) Dioxaphetyl butyrate.
(21) Dipipanone.
(22) Ethylmethylthiambutene.
(23) Etonitazene.
(24) Etoxeridine.
(25) Furethidine.
(26) Hydroxpethidine.
(27) Ketobemidone.
(28) Levomoramide.
(29) Levophenacylmorphan.
(30) Morpheridine.
(31) Noracymethadol.
(32) Norlevorphanol.
(33) Normethadone.
(34) Norpipanone.
(35) Phenadoxone.
(36) Phenampromide.
(37) Phenomorphan.
(38) Phenoperidine.
(39) Piritramide.
(40) Proheptazine.

(41) Properidine.
(42) Propiram.
(43) Racemoramide.
(44) Tilidine.
(45) Trimeperidine.

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine.
(2) Acetyldihydrocodeine.
(3) Benzylmorphine.
(4) Codeine methylbromide.
(5) Codeine-N-oxide.
(6) Cyprenorphine.
(7) Desomorphine.
(8) Dihydromorphine.
(9) Drotebanol.
(10) Etorphine (except hydrochloride salt).
(11) Heroin.
(12) Hydromorphinol.
(13) Methyldesorphine.
(14) Methyldihydromorphine.
(15) Morphine methylbromide.
(16) Morphine methylsulfonate.
(17) Morphine-N-oxide.
(18) Myrophine.
(19) Nicocodeine.
(20) Nicomorphine.
(21) Normorphine.
(22) Pholcodine.
(23) Thebacon.

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(1) 4-bromo-2, 5-dimethoxy-amphetamine Some trade or other names: 4-bromo-2, 5-dimethoxy- -methylphenethylamine; 4-bromo-2, 5-DMA.

(2) 2, 5-dimethoxyamphetamine Some trade or other names: 2, 5-dimethoxy- -methylphenethylamine; 2, 5-DMA.

(3) 4-methoxyamphetamine Some trade or other names: 4-methoxy- -methylphenethylamine; paramethoxyamphetamine, PMA.

(4) 5-methoxy-3, 4-methylenedioxy - amphetamine.

(5) 4-methyl-2, 5-dimethoxy-amphetamine Some trade and other names: 4-methyl-2, 5-dimethoxy- -methylphenethylamine; "DOM"; and "STP".

(6) 3, 4-methylenedioxy amphetamine.

(7) 3, 4, 5-trimethoxy amphetamine.

(8) Bufotenine. Some trade and other names: 3-(-dimethylaminoethyl)-5 hydroxindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; -5-hydroxy-N, N-dimethyltryptamine; mappine.

(9) Diethyltryptamine. Some trade and other names: N, N-diethyltryptamine; DET.

(10) Dimethyltryptamine. Some trade or other names: DMT.

(11) Ibogaine. Some trade and other names: 7-ethyl-6, 6', 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5h-pyrido 1 ,2 :1,2 azepino 5,4-b indole; tabernanthe iboga.

(12) Lysergic acid diethylamide.

(13) Marihuana.

(14) Mescaline.

(15) Parahexyl. Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetra hydro-6,6,9-trimethyl-6H-dibenfo [b,d] pyran.

(16) Peyote. Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts.

(17) N-ethyl-3-piperidyl benzilate.

(18) N-methyl-3-piperidyl benzilate.

(19) Psilocybin.

(20) Psilocyn.

(21) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers

6 cis or trans tetrahydrocannabinol, and their optical isomers

3, 4 cis or trans tetrahydrocannabinol, and its optical isomers (since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).

(22) Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine cyclohexamine, PCE.

(23) Pyrrolidine analog of phencyclidine. Some trade or other names 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy, PHP.

(24) Thiophene analog of phencyclidine. Some trade or other names: 1- 1-(2-thienyl)-cyclohexyl -piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone.

(2) Methaqualone.

(3) Phencyclidine.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylline.

(2) N-ethylamphetamine.

Schedule II. (a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:

1. Raw opium.
2. Opium extracts.
3. Opium fluid extracts.
4. Powdered opium.
5. Granulated opium.
6. Tincture of opium.
7. Codeine.
8. Ethylmorphine.
9. Etorphine hydrochloride.
10. Hydrocodone.
11. Hydromorphone.
12. Metopon.
13. Morphine.
14. Oxycodone.
15. Oxymorphone.
16. Thebaine.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in this section, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, including cocaine and ecgonine, their salts, isomers, and salts of isomers, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

(c) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(1) Alfentanil.
(2) Alphaprodine.
(3) Anileridine.
(4) Bezitramide.
(5) Bulk dextropropoxyphene (non-dosage forms).
(6) Dihydrocodeine.
(7) Diphenoxylate.

(8) Fentanyl.
(9) Isomethadone.
(10) Levomethorphan.
(11) Levorphanol.
(12) Metazocine.
(13) Methadone.
(14) Methadone-intermediate. 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
(15) Moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid
(16) Pethidine (meperidine).
(17) Pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
(18) Pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
(19) Pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
(20) Phenazocine.
(21) Piminodine.
(22) Racemethorphan.
(23) Racemorphan.
(24) Sufentanil.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
(2) Methamphetamine, its salts, isomers, and salts of its isomers.
(3) Phenmetrazine and its salts.
(4) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital.
(2) Glutethimide.
(3) Pentobarbital.
(4) Secobarbital.

(f) Hallucinogenic substances. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product.

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances:

[(1)] Immediate precursor to amphetamine and methamphetamine:

(i) Phenylacetone Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;

(2) Immediate precursors to phencyclidine (PCP):

(i) 1-phenylcyclohexylamine;

(ii) 1-piperidinocyclohexanecarbonitrile (PCC).

Schedule III. (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on August twenty-five, nineteen hundred seventy-one, as excepted compounds under title twenty-one, section 308.32 of the code of federal regulations and any other drug of the quantitive composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

(2) Benzphetamine.

(3) Chlorphentermine.

(4) Clortermine.

(5) Phendimetrazine.

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital;

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital;

or any salt of any of these drugs and approved by the federal food and drug administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.

(4) Chlorhexadol.

(5) Lysergic acid.

(6) Lysergic acid amide.

(7) Methyprylon.

(8) Sulfondiethylmethane.

(9) Sulfonethylmethane.

(10) Sulfonmethane.

(d) Nalorphine.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1.8 grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than three hundred milligrams of dihydrocodeinone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than three hundred milligrams of dihydrocodeinone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

Schedule IV. (a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam.
(2) Barbital.
(3) Bromazepam.
(4) Camazepam.
(5) Chloral betaine.
(6) Chloral hydrate.
(7) Chlordiazepoxide.
(8) Clobazam.
(9) Clonazepam.
(10) Clorazepate.
(11) Clotiazepam.
(12) Cloxazolam.
(13) Delorazepam.
(14) Diazepam.
(15) Estazolam.
(16) Ethchlorvynol.

(17) Ethinamate.
(18) Ethyl Loflazepate.
(19) Fludiazepam.
(20) Flunitrazepam.
(21) Flurazepam.
(22) Halazepam.
(23) Haloxazolam.
(24) Ketazolam.
(25) Loprazolam.
(26) Lorazepam.
(27) Lormetazepam.
(28) Mebutamate.
(29) Medazepam.
(30) Meprobamate.
(31) Methohexital.
(32) Methylphenobarbital (mephobarbital).
(33) Nimetazepam.
(34) Nitrazepam.
(35) Nordiazepam.
(36) Oxazepam.
(37) Oxazolam.
(38) Paraldehyde.
(39) Petrichoral.
(40) Phenobarbital.
(41) Pinazepam.
(42) Prazepam.
(43) Temazepam.
(44) Tetrazepam.
(45) Triazolam.

(d) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers and salts of isomers is possible:

(1) Fenfluramine.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of such isomers:

(1) Diethylpropion.
(2) Mazindol.
(3) Pemoline (including organometallic complexes and chelates thereof).
(4) Phentermine.
(5) Pipradrol.
(6) SPA (-)-1-dimethylamino-1, 2-diphenylethane).

(f) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Pentazocine.

Schedule V. (a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the

following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualitites other than those possessed by narcotic drugs alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams.

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams.

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams.

(6) Not more than 0.5 milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(c) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material compound, mixture or preparation containing any of the following narcotic drugs and their salts, as set forth below:

(1) Buprenorphine.

§ 567. Exception from schedules. 1. The authority may, by regulation, except any compound, mixture, or preparation containing any depressant substance in paragraph (a) of schedule III or in schedule IV from the application of all or any part of this article if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and (2) such ingredients are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a depressant effect on the central nervous system.

2. The authority may, by regulation, reclassify as a schedule III substance, any compound, mixture or preparation containing any stimulant substance listed in paragraph (c) of schedule II, if

(a) the compound, mixture or preparat or contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system; and

(b) such ingredients are included therein in such combinations, quantity, proportion or concentration as to vitiate the potential for abuse of the substances which do have a stimulant effect on the central nervous system.

3. The authority may, by regulation, except any compound, mixture or preparation containing a narcotic antagonist substance from the application of all or any part of this article if (1) such compound, mixture or preparation has no potential for abuse, and (2) such compound, mixture or preparation has been excepted or exempted from control under the Federal Controlled Substances Act.

§ 568. Controlled substances license. 1. No person shall dispense, sell or traffic in a controlled substance in this state without first having obtained a license to do so from the authority.

2. Any person currently licensed to dispense controlled substances in the course of a licensed professional practice licensed or permitted pursuant to the education law or a licensed pharmacist who is not under indictment for or convicted of a felony or of selling controlled sub-

stances to a person under twenty-one years of age in any jurisdiction may apply to the controlled substances authority for a license to sell controlled substances. Such application shall be in writing and verified and shall contain such information as the controlled substances authority shall require. Such application shall be accompanied by a certified check, bank officers' check or draft, or money order for the amount required by this article for such license. If the controlled substances authority shall grant the application it shall issue a license in such form as shall be determined by its rules. Such license shall contain a description of the licensed premises, except in the case of doctors licensed to practice their profession and dispense medications pursuant to the education law, and in form and in substance shall be a license for a period of three years to the person therein specifically designated to sell controlled substances in the premises therein specifically licensed.

3. Not more than one license shall be granted to any person under this section.

4. Notwithstanding any other provision of this article, upon receipt of an application for a license or renewal thereof under this section, the applicant shall promptly notify the clerk of the village, town or city, as the case may be, by certified mail, return receipt requested, wherein the prospective licensed premises is to be located or, in the case of an application for renewal, where it is presently located or, in the case of a doctor, both wherein his residence and office are located. For the purposes of the preceding sentence notification need only be given to the clerk of a village when such premises, residence or office location is to be located within the boundaries of the village. In the city of New York, the community board established pursuant to section twenty-eight hundred of the New York city charter with jurisdiction over the area in which such licensed premises is to be located shall be considered the appropriate public body to which notification shall be given. Such municipality or community board, as the case may be, may express an opinion for or against the granting of such license. Any such opinion shall be deemed part of the record upon which the liquor board makes its determination to grant or deny such license.

5. No controlled substances license shall be granted for any premises which shall be on the same street or avenue and within two hundred feet of a building occupied exclusively as a school, church, synagogue or other place of worship; the measurements to be taken in a straight line from the center of the nearest entrance of such school, church, synagogue or other place of worship to the center of the nearest entrance of the premises to be licensed.

Within the context of this subdivision, the word "entrance" shall mean a door of a school, of a house of worship, or of the premises sought to be licensed, regularly used to give ingress to students of the school, to the general public attending the place of worship, and to patrons of the premises proposed to be licensed, except that where a school or house of worship is set back from a public thoroughfare, the walkway or stairs leading to any such door shall be deemed an entrance; and the measurement shall be taken to the center of the walkway or stairs at the point where it meets the building line or public thoroughfare. A door which has no exterior hardware, or which is used solely as an emergency or fire exit, or for maintenance purposes, or which leads directly to a part of a building not regularly used by the general public or patrons, is not deemed an "entrance".

6. Such license shall in form and in substance be a license to the person specifically licensed to sell controlled substances on the premises specifically licensed except in the case of licensed doctors.

§ 569. Prohibited sales. 1. No person shall sell, deliver or give away or cause or permit or procure to be sold, delivered or given away any controlled substances to any person, actually or apparently, under the age of twenty-one years.

2. Neither such person so refusing to sell or deliver under this section nor his employer shall be liable in any civil or criminal action or for any fine or penalty based upon such refusal, except that such sale or delivery shall not be refused, withheld from or denied to any person on account of race, creed, color or national origin. In any proceeding pursuant to subdivision one of this section, it shall be an affirmative defense that such person had produced a photographic identification card apparently issued by a governmental entity or institution of higher education and that the controlled substance had been sold, delivered or given to such person in reasonable reliance upon such identification.

§ 570. Procuring controlled substances for persons under the age of twenty-one years. Any person who misrepresents the age of a person under the age of twenty-one years for the purpose of inducing the sale of any controlled substance, as defined in this article to such person, is guilty of an offense and upon conviction thereof shall be punished by a fine of not more than two hundred dollars, or by imprisonment for not more than five days, or by both such fine and imprisonment.

§ 571. Criminal sale of a controlled substance in or near school grounds. A person is guilty of criminal sale of a controlled substance in or near school grounds when he knowingly and unlawfully sells a controlled substance to a person less than nineteen years of age, when such sale takes place upon school grounds; criminal sale of a controlled substance in or near school grounds is a class B felony.

§ 572. Offense for one under age of twenty-one years to purchase or attempt to purchase a controlled substance through fraudulent means. 1. Any person under the age of twenty-one years who presents or offers to any licensee under this article, or to the agent or employee of such licensee, any written evidence of age which is false, fraudulent or not actually his own, for the purpose of purchasing or attempting to purchase any controlled substance, may be arrested or summoned and be examined by a magistrate having jurisdiction on a charge of illegally purchasing or attempting to illegally purchase a controlled substance. If a determination is made sustaining such charge the court or magistrate shall release such person on probation for a period of not exceeding one year, and may in addition impose a fine not exceeding one hundred dollars.

2. No such determination shall operate as a disqualification of any such person subsequently to hold public office, public employment, or as a forfeiture of any right or privilege or to receive any license granted by public authority; and no such person shall be denominated a criminal by reason of such determination, nor shall such determination be deemed a conviction.

§ 573. Violation of article a class E felony. The violation of any provision of this article, other than such which may have been otherwise specifically provided therefor herein, shall be a class E felony.

§ 574. License fees. The annual fee for a license to sell controlled substances shall be ten hundred sixty-seven dollars in the counties of New York, Kings, Bronx and Queens; six hundred sixty-seven dollars in the county of Richmond and in cities having a population of more than

one hundred thousand and less than one million; and elsewhere the sum of four hundred dollars; provided, however, that the fee for persons licensed to dispense controlled substances in the course of a licensed professional practice shall be the sum of two hundred fifty dollars unless controlled substances are dispensed by him other than in the course of such a professional practice, in which case the annual fee shall be as otherwise provided in this section.

§ 575. License fees, duration of licenses; fee for part of year. Licenses issued pursuant to section five hundred sixty-eight of this title shall be effective for three years at three times that annual fee, except that, in implementing the purposes of this section, the authority shall schedule the commencement dates, duration and expiration dates thereof to provide for an equal cycle of license renewals issued under such section through the course of the fiscal year. For licenses issued for less than the three-year licensing period, the license fee shall be levied on a pro-rated basis. The license fee shall be due and payable at the time of application. The authority may make such rules as shall be appropriate to carry out the purpose of this section.

§ 576. Revocation of licenses. Any license granted pursuant to this article may be revoked by the authority in whole or in part upon a finding that the licensee has:

1. falsified any application, report, or record required by this article;

2. wilfully failed to furnish the authority with timely reports or information required to be filed with the authority;

3. been convicted of an offense in any jurisdiction relating to any substance listed in this article as a controlled substance;

4. wilfully or negligently failed to comply with any of the provisions of the Federal Controlled Substances Act, this article, or the regulations promulgated thereunder;

5. failed to maintain effective control against diversion of controlled substances; or

6. wilfully and unreasonably refused to permit an inspection authorized by this article.

§ 577. Revocation and suspension of license procedure. 1. A proceeding to revoke a license shall be commenced by a notice served personally or by registered or certified mail upon the licensee directing him to show cause why his license should not be revoked. Such notice shall set forth in detail the grounds for the proposed revocation and shall fix a date for hearing not less than fifteen nor more than thirty days from the date of such notice.

2. Simultaneous with the commencement of a proceeding to revoke a license or during the course of such proceeding, the authority may in the case of a clear and imminent danger to the public health or safety forthwith suspend without prior notice any license theretofore issued.

3. If the authority suspends or revokes a license, all controlled substances owned or possessed by the licensee in the state of New York at the time of the suspension or the effective date of the revocation and which such licensee is no longer authorized to possess, shall be seized or placed under seal in the manner provided in this article.

4. In lieu of revocation of a license or certificate, the authority may impose a civil penalty not in excess of ten thousand dollars. Such penalty may be imposed in lieu of revocation only if the authority is satisfied that the imposition and payment of such penalty will serve as a sufficient deterrent to future violations.

§ 578. Formal hearings procedure. 1. The authority or any person designated by it for this purpose, shall have the power to administer oaths, compel the attendance of witnesses and the production of books, records and documents and to take proof and testimony concerning all matters within its jurisdiction.

2. Notice of hearing shall be served at least fifteen days prior to the date of the hearing provided, however, that, whenever the authority has made a preliminary order suspending a license or directing the cessation of any activity pending the hearing, the authority shall provide the person affected thereby with an opportunity to be heard within five days.

3. At a hearing any person who is a party thereto may appear personally, shall have the right of counsel, may cross-examine witnesses and produce evidence and witnesses in his own behalf.

4. Following a hearing, the authority shall make appropriate findings of fact and determinations and shall issue an order in accordance therewith.

5. The person conducting the hearing shall not be bound by the rules of evidence but any determination must be founded upon sufficient legal evidence to sustain it.

6. The authority may adopt such rules and regulations governing the procedures to be followed with respect to the hearings as may be consistent with the fair and effective administration of this article.

7. Any notice, application, order or other paper required to be served upon any party to a proceeding hereunder may be served in person, by registered mail or by certified mail upon either the party or an attorney who has appeared on his behalf.

§ 579. Judicial review. 1. All orders or determinations hereunder shall be subject to judicial review as provided in article seventy-eight of the civil practice law and rules. In any such proceeding findings of fact made by the authority, if supported by substantial evidence, shall be conclusive.

2. Application for such review must be made within sixty days after service of the order or determination upon the person whose license, certificate, right or privilege is affected thereby or upon the attorney of record for such person.

3. An order, or the enforcement of an order revoking or suspending a license or revoking or cancelling official forms issued by the authority, if accompanied by a finding of a clear and imminent danger to the public health or safety, may not be temporarily stayed or restrained prior to a determination on the merits of the application for judicial review.

§ 580. Violations; penalties. 1. In any civil, criminal or administrative action or proceeding brought for the enforcement of any provision of this article, it shall not be necessary to negate or disprove any exception, excuse, proviso or exemption contained in this article, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the person claiming its benefit.

2. Violation of any provision of this article for which a penalty is specifically provided herein shall be punishable as provided herein. Violation of any provision of this article for which no penalty is provided herein shall be punishable as provided in the penal law.

3. No person shall be prosecuted for a violation of any provision of this article if such person has been acquitted or convicted under the federal controlled substances act, of the same act or omission which, it is alleged, constitutes a violation of this article.

4. Upon the conviction of any person for violating any provision of this article, a copy of the judgment and sentence, and of the opinion of the court or judge, if any opinion be filed, shall be sent by the clerk of the court, or by the judge, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession, or to carry on his business.

5. Upon the imposition of any penalty, warning, reprimand or other sanction against any person for violating any provision of this article, a copy of the order, finding or opinion, if any is made or rendered, shall be sent by the person authorized by law to make such determination, to the board or officer by whom the respondent is licensed or registered to practice a profession or to carry on a business.

TITLE III

MANUFACTURE AND DISTRIBUTION OF CONTROLLED SUBSTANCES

Section 585. Licenses for manufacture or distribution of controlled substances.
586. Authority to issue initial licenses, amended licenses, and to renew licenses.
587. Application for initial license.
588. Granting of initial license.
589. Applications for renewal of licenses to manufacture or distribute controlled substances.
590. Granting of renewal of licenses.
591. Identification of controlled substances.
592. Distribution of free samples.
593. Authorized distribution.
594. Exempt distribution.
595. Reports and records.

§ 585. Licenses for manufacture or distribution of controlled substances. 1. No person shall manufacture or distribute a controlled substance in this state without first having obtained a license to do so from the authority.

2. A license issued under this section shall be valid for two years from the date of issue, except that in order to facilitate the renewals of such licenses, the authority may, upon the initial application for a license, issue some licenses which may remain valid for a period of time greater than two years but not exceeding an additional eleven months.

3. The fee for a license under this section shall be six hundred dollars; provided however, if the license is issued for a period greater than two years the fee shall be increased, pro rata, for each additional month of validity.

4. Licenses issued under this section shall be effective only for and shall specify:

(a) the name and address of the licensee;

(b) the nature of the controlled substances, either by name or schedule, or both, which may be manufactured or distributed;

(c) whether manufacture or distribution or both such activities are permitted by the license.

5. Upon application of a licensee, a license may be amended to allow the licensee to relocate within the state or to add a manufacturing or distributing activity or to add further substances or schedules to the manufacturing or distribution activity permitted thereunder. The fee for such amendment shall be one hundred twenty-five dollars.

§ 586. Authority to issue initial licenses, amended licenses, and to renew licenses. 1. Subject to the provisions of this article the

authority is authorized to issue licenses authorizing the manufacture or distribution of controlled substances.

2. An application for a license, amendment of a license, or renewal of a license which, if granted, would authorize the manufacture or distribution of a controlled substance which the applicant is not then authorized to manufacture or distribute shall, with respect to any such additional authorization, be treated as an application for an initial license.

3. An application for a license which, if granted, would authorize a licensee to continue to manufacture or distribute a controlled substance shall, with respect to such continued manufacture or distribution only, be treated as an application for renewal of a license.

4. A late-filed application for the renewal of a license may, in the discretion of the authority, be treated as an application for an initial license.

§ 587. Application for initial license. 1. An applicant for an initial license to manufacture or distribute controlled substances shall furnish to the authority such information as it shall require and evidence that the applicant:

(a) and its managing officers are of good moral character;

(b) possesses sufficient land, buildings and equipment to properly carry on the activity described in the application;

(c) is able to maintain effective control against diversion of the controlled substances for which the license is sought;

(d) is able to comply with all applicable state and federal laws and regulations relating to the manufacture or distribution of the controlled substances for which the license is sought.

2. The application shall include the name, residence address and title of each of the officers and directors and the name and residence address of any person having a ten per centum or greater proprietary, beneficial, equitable or credit interest in the applicant. Each such person, if an individual, or lawful representative if a legal entity, shall submit an affidavit with the application setting forth:

(a) any position of management or ownership during the preceding ten years of a ten per centum or greater interest in any other business, located in or outside this state, manufacturing or distributing drugs; and

(b) whether such person or any such business has been convicted, fined, censured or had a license suspended or revoked in any administrative or judicial proceeding relating to or arising out of the manufacture or distribution of drugs; and

(c) such other information as the authority may require.

3. The applicant shall be under a continuing duty to report to the authority any change in facts or circumstances reflected in the application on any newly discovered or occurring fact or circumstance which is required to be included in the application.

§ 588. Granting of initial license. 1. The authority shall grant an initial license or amendment to a license as to one or more of the substances or activities enumerated in the application if it is satisfied that:

(a) the applicant will be able to maintain effective control against diversion of controlled substances;

(b) the applicant will be able to comply with all applicable state and federal laws;

(c) the applicant and its officers are ready, willing and able to properly carry on the manufacturing or distributing activity for which a license is sought;

(d) the applicant possesses sufficient land, buildings and equipment to properly carry on the activity described in the application;

(e) it is in the public interest that such license be granted; and

(f) the applicant and its managing officers are of good moral character.

2. If the authority is not satisfied that the applicant should be issued an initial license, it shall notify the applicant in writing of those factors upon which further evidence is required. Within thirty days of the receipt of such notification, the applicant may submit additional material to the authority or demand a hearing or both.

§ 589. Applications for renewal of licenses to manufacture or distribute controlled substances. 1. An application for the renewal of any license issued pursuant to this title shall be filed with the authority not more than six months nor less than four months prior to the expiration thereof.

2. The application for renewal shall include such information prepared in such manner and detail as the authority may require, including but not limited to:

(a) any material change in the circumstances or factors listed in section five hundred eighty-seven of this title;

(b) every known charge or investigation, pending or concluded during the period of the license, by any governmental agency with respect to:

(i) each incident or alleged incident involving the theft, loss, or possible diversion of controlled substances manufactured or distributed by the applicant; and

(ii) compliance by the applicant with the requirements of the federal controlled substances act, or the laws of any state with respect to any substance listed in section five hundred sixty-six of this article.

3. An applicant for renewal shall be under a continuing duty to report to the authority any change in facts or circumstances reflected in the application or any newly discovered or occurring fact or circumstance which is required to be included in the application.

4. If the authority is not satisfied that the applicant is entitled to a renewal of such license, it shall within forty-five days after the filing of the application serve upon the applicant or his attorney of record in person or by registered or certified mail an order directing the applicant to show cause why his application for renewal should not be denied. Such order shall specify in detail the respects in which the applicant has not satisfied the authority that the license should be renewed.

5. Within thirty days of service of such order, the applicant may either submit additional material to the authority or demand a hearing or both. If a hearing is demanded the authority shall fix a date for hearing not sooner than fifteen days nor later than thirty days after receipt of the demand, unless such time limitation is waived by the applicant.

§ 590. Granting of renewal of licenses. 1. The authority shall renew a license unless it determines and finds that the applicant:

(a) is unlikely to maintain or be able to maintain effective control against diversion; or

(b) is unlikely to comply with all federal and state laws applicable to the manufacture or distribution of the controlled substance or substances for which the license is sought.

2. For purposes of this section, proof that a licensee, during the period of his license, has failed to maintain effective control against diversion or has knowingly or negligently failed to comply with applicable federal or state laws relating to the manufacture or distribution of controlled substances, shall constitute substantial evidence that the applicant will be unlikely to maintain effective control against diversion or be unlikely to comply with the applicable federal or state statutes during the period of proposed renewal.

§ 591. Identification of controlled substances. 1. No controlled substance may be manufactured or delivered within this state in solid or capsule form unless it has clearly marked or imprinted upon each such capsule or solid:

(a) an individual symbol or number assigned to the person who manufactured the controlled substance in such form, and

(b) a code number or symbol assigned by the authority identifying such substance or combination of substances.

2. No controlled substance contained within a bottle, vial, carton or other container, or in any way affixed or appended to or enclosed within a package of any kind, and designed or intended for delivery in such container or package to an ultimate consumer, shall be manufactured or distributed within this state unless such container or package has clearly and permanently marked or imprinted upon it:

(a) an individual symbol or number assigned to the person who packaged the controlled substance in such form; and

(b) a code number or symbol assigned by the authority identifying such substance or combination of substances.

3. The authority shall assign a code number or symbol to each controlled substance, and in its discretion for combinations of substances, so as to provide ready identification of such substance. Upon application by a manufacturer of controlled substances, the authority shall assign to such manufacturer an identifying number or symbol. Wherever possible and practical, the authority shall assign code numbers which conform to the national drug code system.

§ 592. Distribution of free samples. It shall be unlawful to distribute free samples of controlled substances, except to persons licensed pursuant to title IV of this article.

§ 593. Authorized distribution. 1. Controlled substances may be lawfully distributed within this state only to licensed distributors or manufacturers, practitioners, pharmacists, pharmacies, institutional dispensers, and laboratory, research or instructional facilities authorized by law to possess the particular substance distributed.

2. A person authorized to obtain a controlled substance by distribution may lawfully receive such substance only from a distributor licensed pursuant to this article.

§ 594. Exempt distribution. 1. The authority by regulation or ruling may exempt from the licensing requirements of this title:

(a) the return of controlled substances to a manufacturer or distributor by a practitioner or pharmacy;

(b) the sale of controlled substances by a pharmacy or practitioner to a pharmacy or practitioner for the immediate needs of the pharmacy or practitioner receiving such substances; and

(c) the disposition of controlled substances by a person in lawful possession thereof who, not in the ordinary course of business, wishes to discontinue such possession.

2. Records of such transactions shall be prepared and maintained and reports filed in such manner as the authority shall require.

§ 595. Reports and records. 1. Persons licensed under this title shall maintain records of all controlled substances manufactured, received, disposed of or distributed by them. The record shall show the date of receipt or delivery, the name and address, and registration number of the person from whom received or to whom distributed, the kind and quantity of substance received and distributed, the kind and quantity of substance produced or removed from the process of manufacture and the date thereof.

2. Any person licensed under this title shall prepare and maintain a biennial report setting forth the current inventory of controlled substances, the quantities of controlled substances manufactured or distributed within the state during the period covered by the report and such other information as the authority shall by regulation prescribe. Maintaining for inspection a biennial inventory of controlled substances prepared and maintained in compliance with federal statutes and regulations shall be deemed in compliance with this section.

3. Any person licensed under this title shall forthwith notify the authority of any incident involving the theft, loss or possible diversion of controlled substances manufactured or distributed by the licensee.

4. The records and reports required by this section shall be prepared, preserved, or filed in such manner and detail as the authority shall by regulation prescribe.

TITLE IV

RESEARCH, INSTRUCTIONAL ACTIVITIES, AND CHEMICAL ANALYSIS RELATING TO CONTROLLED SUBSTANCES

Section 600. Licenses to engage in research, instructional activities, and chemical analysis relating to controlled substances.

601. Authority to issue licenses; applications.

602. Institutional research licenses.

603. Procedure.

604. Exemptions from title.

605. Reports and records.

§ 600. Licenses to engage in research, instructional activities, and chemical analysis relating to controlled substances. 1. No person within this state shall manufacture, obtain, possess, administer or dispense a controlled substance for purposes of scientific research, instruction or chemical analysis without having first obtained a license to do so from the authority.

2. A license issued under this title shall be valid for two years from the date of issue.

3. The fee for a license under this title shall be twenty dollars.

4. Licenses issued under this title shall be effective only for and shall specify:

(a) the name and address of the licensee;

(b) the nature of the project or projects permitted by the license;

(c) the nature of the controlled substance or substances to be used in the project, by name if in schedule I of section five hundred sixty-six of this article, and by name or schedule or both if in any other schedule in this article;

(d) whether dispensing to human subjects is permitted by the license.

5. Upon application of a person licensed pursuant to this title, a license may be amended to add a further activity or to add further substances or schedules to the project permitted thereunder. The fee for such amendment shall be ten dollars.

§ 601. Authority to issue licenses; applications. 1. Subject to the provisions of this title, the authority is authorized to license a person to manufacture, obtain and possess, dispense, and administer controlled substances for purposes of scientific research, chemical analysis or instruction.

2. A license or amendment of a license shall be issued by the authority unless the applicant therefor has failed to furnish a satisfactory protocol pursuant to subdivision three of this section, or a satisfactory statement pursuant to section six hundred two of this title, and proof that the applicant:

(a) and its managing officers are of good moral character;

(b) possesses or is capable of acquiring facilities, staff and equipment sufficient to carry on properly the proposed project detailed in the protocol or statement accompanying the application;

(c) is able to maintain effective control against diversion of the controlled substances for which the license is sought;

(d) is able to comply with all applicable state and federal laws and regulations relating to the controlled substances for which the license is sought.

3. An application for a license or for an amendment to a license shall be accompanied by a detailed protocol setting forth:

(a) the nature of the proposed project;

(b) the proposed quantity or quantities of each controlled substance involved;

(c) the qualifications and competence of the applicant to engage in such project;

(d) specific provisions for the safe administration or dispensing of controlled substances to humans, if such is contemplated, and the proposed method of selecting humans;

(e) such other additional information as the authority may require.

4. The application for a license pursuant to this title shall include copies of all papers filed with the Bureau, the Federal Food and Drug Administration and any other governmental agency, whether state or federal, in connection with the applicant's proposed project.

§ 602. Institutional research licenses. 1. Subject to the provisions of this title, the authority is authorized to license an institution, which regularly engages in research, to approve specific projects conducted under its immediate auspices.

2. An institution seeking a license pursuant to this section shall make application in the same manner as an applicant for a license pursuant to section six hundred one of this title. However, such institution shall submit, in lieu of a detailed protocol of a specific project, a statement including:

(a) the qualifications and such other data as the authority may require regarding each member of the committee within the institution which will approve specific projects;

(b) a description of the system within the institution for approving, supervising and evaluating such projects.

3. Upon approval of each specific project, such institution shall forward to the authority a description of the project, the names and qualifications of the individuals working thereon and of those individuals designated to supervise the project. If administration or dispensing to human subjects is contemplated, there shall also be included a description of the provisions for safe administration or dispensing.

4. Such institution shall forward to the authority periodic progress reports and evaluations of, as well as amendments to each project, in such manner and in such detail as the authority may prescribe.

§ 603. Procedure. 1. A license or amendment to a license shall be issued or refused by the authority within ninety days from the date of filing of a completed application.

2. Within thirty days of notification of such refusal, the applicant may either submit additional material to the authority or demand a hearing or both. If a hearing is demanded the authority shall fix a date for hearing not sooner than fifteen days nor later than thirty days after receipt of the demand, unless such time limitation is waived by the applicant.

§ 604 Exemptions from title. The following persons engaging in the following activities shall be exempt from the provisions of this title:

1. A practitioner lawfully administering, dispensing or prescribing a controlled substance in the course of his professional practice to an ultimate user for a recognized medical purpose;

2. A licensed manufacturer engaged in research upon non-human subjects or chemical analysis conducted on the premises specified in the manufacturer's license;

3. A licensed distributor engaged in quality control analysis at the premises specified in his license.

4. A practitioner or patient participating in a clinical research program on the therapeutic use of marihuana or tetrahydrocannabinols.

(a) Each such clinical research program shall have received protocol approval from the United States Food and Drug Administration, shall possess an effective investigational new drug application and shall have been registered by the Drug Enforcement Administration, United States Department of Justice.

(b) Each such clinical research program authorized under the provisions of article thirty-three-A of the public health law.

§ 605. Reports and records. 1. Persons licensed under this title shall keep records showing the receipt, administration, dispensing or destruction of all controlled substances and maintain the records in such manner and detail as the authority, by regulation, shall require.

2. Persons licensed under this title shall submit reports to the authority summarizing the activity conducted under the license. Included in such report shall be a detailed inventory of controlled substances, and an accounting for all such substances received or disposed of during the period covered by the report and such other information as the authority shall, by regulation, require. Such reports shall be filed with the authority at such times as the authority may require.

§ 2. Articles two hundred twenty and two hundred twenty-one of the penal law are REPEALED.

§ 3. Article thirty-three of the public health law is REPEALED.

§ 4. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law; provided, however, that the provisions of title one of article twenty-one of the executive law, as added by section one of this act shall take effect immediately and provided further, that effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of the foregoing sections of this act on their effective date are authorized and directed to be made and completed on or before such effective date.

When we talked about a British system, they were surprised. They wanted to know what system. They don't even know they had a system at that particular point in time. But I will invite you to the hearings, and God bless you, and stay well.

Mr. RANGEL. Thank you.

This concludes the hearings that we have had. I want to thank Congressman Guarini, who has been with us throughout.

I want to thank Congressman Dornan for being with us.

I want to thank the staff, both Republicans and Democrats, for being able to reach out all over the country in bringing the witnesses here.

We requested from Mayor Schmoke, who focused attention on this debate, a list of those people that supported that position. A lot of them, by the time they go to Washington, have changed their position to being that they wanted discussion and debate.

In any event, I think we have seen the risks involved with talking abut legalizing drugs. For those people who believe that we have given more dignity to the subject than it deserves, I would say that in our great democracy that is what the Congress is all about, to allow anybody to be heard, and we have tried to do that.

I will ask Mr. Guarini whether he has any closing statement to make.

Mr. GUARINI. Thank you, Mr. Chairman.

I want to congratulate you and Chairman Rangel on having some very outstanding hearings. We owe everyone a debt of gratitude for their opinion and having the courage to come forward and express themselves.

I do think that it is not only a timely and important subject matter, but it helps us in the search for not only what we can do, but we want to know what we can't do. So, therefore, we have to eliminate certain areas of options in regard to this drug war.

Our poll showed ABC 90 percent of the people consider drugs illegal and don't want them legalized. We also know in the same poll 70 percent of the people said they want the Federal Government to increase spending to prevent this drug abuse problem. I think that there is no question that we haven't done enough, that we have been piecemeal, we have had no strategy, we have had no national policy, we have been bumbling for the last few years.

Only three years ago we had a national budget of $3 million dedicated to education for 240 million people. We have very few people that were in the DEA, in the Coast Guard and on our borders. We have been very limited in the amount of money that we spend, we didn't do anything in regard to making good use of our military. There are a lot of answers that are slowly coming to the forefront and we do need new directions.

There has been a hopelessness out there, frustration. There has been disappointment, dismay and despair, and I do think we have to get not only to the symptoms but also the nature of the disease, and I think these hearings have helped that immeasurably.

Mr. RANGEL. Mr. Dornan.

Mr. DORNAN. We have six minutes to vote. I think our hearings were very important. This issue is making the rounds on Heraldo, Phillie, Oprah, Ted at night, Sally, Jesse and Sonia. It is on all the shows. We are hearing it out there, and a lot of strange testimony

is going out there. But you put it in a structured way, the way the Congress is supposed to do it, and I think you have really done a constructive thing before this becomes the domain of the fever swamps of the talk shows out there.

Mr. RANGEL. We want to thank Howard University for televising these hearings. I think what it really means is that for those people who are not prepared to deal with the problems of the homeless and the poor, for those people who are not prepared to deal with health and rehabilitation programs, prevention and education, we could end up with the Galiber bill.

So it just seems to me that now is the time to support the Congress and the local city councils and state legislatures to understand that we are talking about education, we are talking about prevention, we are talking about a support system where people should not have to turn to drugs.

I also want to thank PBS TV for allowing the witnesses testimonies to be heard.

This committee will stand adjourned, subject to the call of the Chair.

[Whereupon, at 2:00 p.m., the committee was adjourned, subject to the call of the Chair.]

PREPARED STATEMENTS

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Testimony of

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Prepared for Delivery to the
House Select Committee on Narcotics Abuse and Control
Thursday 29 September 1988
Washington, D.C.

Mr. Chairman, thank you for your invitation to testify today about the history of the drug problem in the United States. This is a broad subject extending more than a century into our past, but I will try to extract those features most relevant to the current debate over the legalization of drugs such as cocaine. I discuss these matters in much greater detail in my book The American Disease (expanded edition, 1987, Oxford University Press).

The first point to be made is that narcotics were legal in the United States last century. There were several reasons for this. Strict construction of the Constitution left police powers - like curbing careless physicians or prohibiting dispensing of

certain drugs - to the States. Furthermore, although US consumption of opium and its active ingredient morphine grew continuously during the 19th century, levels and consequences did not alarm the public until the use of the hypodermic syringe exploded after the 1860s. We reached a level of opium and opiate consumption in the mid-1890s which is arguably the highest per capita level in our history. Some steps at the state level, in some states, were taken by 1900 to limit access to morphine, but the effectiveness was modest if not invisible. Drugs were available from mail-order houses and a wide choice of hypodermic kits could be purchased from the Sears, Roebuck Catalog and elsewhere.

A fear of the effects of morphine and opium appears to have begun a reduction in per capita consumption after the 1890s. We entered what has been called the Progressive Era, a time in many ways like our own today. Americans became increasingly concerned about the environment and what we took into our bodies. The conservation movement, battles for clean air and streams, pure food and drugs, and a curbing of industrial disregard for the waste products of factories energized Americans. Many of the basic laws in these fields were enacted around the turn of the century. Included in this concern was the effect of narcotics on the individual, family and community.

But it was not just morphine or, after 1898, heroin that worried Americans. A new drug, a powerful stimulant, had arrived in the 1880s: cocaine. At first cocaine was considered harmless. Experts in the drug and medical areas assured Americans that cocaine not only safely energized the weary and cheered the melancholy, but that there was no such thing as cocaine addiction. Sometimes the praise was slightly tempered by the advice that cocaine should be taken "in moderation," at other times this bow toward common sense was lacking.

Cocaine rapidly spread through American society. At first it was rather expensive, but in about ten years or so the price of cocaine had dropped enough that it was available to almost everyone. It became a standard remedy for sinusitis and hay fever. It had been in Coca-Cola from the beginning until about 1900 when cocaine's reputation began plummeting. Its damage, especially among young people, was most visible in the cities. In Chicago, Jane Addams was appalled by the effect of cocaine on children she and her co-workers were trying to help. One example she gave: "He had been in our kindergarten as a handsome merry child, in our clubs as a vivacious boy, and then gradually there was an eclipse of all that was animated and joyous and promising, and when I last saw him in his coffin [at the age of seventeen], it was impossible to connect that haggard shriveled body with what I had known before." Jane Addams succeeded in getting a stronger state law in Illinois in 1907, eighty-one years ago.

Chicago's poor neighborhoods did not differ much from the worst inner-city areas of today. One observer called Chicago "first in violence, deepest in dirt; loud, lawless, unlovely, ill-smelling, new..." Cocaine was everywhere, from soda pop to sniffing powders. But Ms Addams, who would later become the first American woman to receive the Nobel Peace Prize, did not abandon these difficult neighborhoods to cocaine. She was spurred to action by the effect of cocaine on the minds and bodies of young people. And eventually, after years of struggle, she and the neighborhoods won. As a result of the anti-cocaine attitude expressed in several state laws, such as the Al Smith anti-cocaine law of New York in 1913, and then at the national level the Harrison Anti-narcotic Act of 1914, the attack on cocaine eventually succeeded, although more slowly than an impatient America wished. Cocaine's availability in the 1930s was far less than in 1910 and by the 1940s and 1950s, cocaine had become a memory for the vast majority of Americans.

In the time from 1885 to about 1905, twenty years, cocaine had moved from a harmless tonic to a drug which was seen as dangerous to take even once. This is a fundamental shift in popular attitudes that underlay the decline in demand. Such a changed perception of a drug from being a help to a hindrance occurred in the United States in other cycles of drug use.

In fact, the United States has a long history of slowly alternating attitudes toward drugs. If we include alcohol, these cycles of tolerance and intolerance toward drugs extend back to the earliest days of our nation. What can I say briefly about these cycles? That a drug is initially seen as being a tonic, a stimulant to the body, and helpful in attaining insight or relaxation. The claims for drugs are positive and their use, if someone knows nothing more than the claims, seems reasonable. The road from this initial positive attitude to refusing to try drugs, is a long one. We find any reason to reject the dangerousness of drugs and overlook or explain away the bad effects. Because the use of drugs is in general an individual decision, a lot of minds must change in order to reduce demand.

This move toward seeing drugs as harmful to achieving productive goals in life affects all the institutions of society. Schools, the police, courts, churches, and other institutions cooperate and reinforce one another in the rejection of drugs. In the first stage of drug use these institutions may not have taken the problem very seriously or not even have seen drug use as a problem. Gradually, the pressure of these institutions makes drug use less easy, less desirable and less approved. Peer pressure can be as much against drugs as for them. Slowly, drug use declines.

The last time this happened, about 1920 to 1950, we strove to erase the memory of the earlier drug epidemic from our minds and our textbooks. With a very natural response to a scourge Americans hoped would never recur, we settled on three strategies: extreme punishment, silence or exaggeration. The effect of these measures may have been sadly and paradoxically to create new generations coming of age in the 1960s knowing nothing of the reality of drugs. The official information contained such exaggerated descriptions of their dangers that the government lost all credibility among young people discovering they had been grossly misled.

I believe we have moved in the current epidemic, as in the last, toward rejection of drugs as helpful and harmless. We can see signs of this in many areas from the decline in approval of marijuana since 1978 to a more recent drop in cocaine among high-school seniors. Public opinion polls on the legalization of marijuana have paralleled these changes. With this shift from seeing a drug like cocaine being relatively harmless in the mid-1970s to our current perception, legalizing the drug is a proposal simply out of step with public attitudes. The first cocaine epidemic shows that widespread use should not lead us to helplessness and hopelessness: use can be reduced. Further, the actual physiological and mental effects of cocaine as well as the actual effects of heroin are destructive to neighborhoods,

community organization and to families as well as to the individual addicted. It is not just the price of drugs or turf wars that create problems - although those are an easily visible side of the drug question. It is the slowly, quietly destructive effect of the drugs on social cohesion that is the greatest and most lasting destruction of all.

The question arises: does the great profit from illegal drugs make demand reduction impossible? Is the damage done by fighting for turf between gangs worth the legal restraints on drugs? This is a decision Congress and the nation must make. My belief is that the popular attitude which is growing so powerfully against drug use in this country is in the long run more determinative than profits or even foreign supply. Coca bushes grew in Bolivia and Peru before, during and after the first cocaine epidemic. As for profits, there were profits in the past, both legitimate when cocaine was legal and by pushers when illegal. Eventually, the fear engendered by cocaine along with the legal and institutional restraints did bring the epidemic under control. I believe legal sanctions are as necessary and appropriate to support this shift of attitude toward drugs as in the struggle against racial discrimination.

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The problems we have had regarding cocaine and illicit profits certainly arise from cocaine's illegality in a period of tolerance toward the drug. Many saw no real evil in providing that which they considered harmless - in moderation. If we had maintained the earlier antagonism toward cocaine through the 1960s, based on a vivid knowledge about its actual effects, one wonders whether we would have had such a serious problem a second time.

This brings me, in this brief opening statement, to the near and more distant futures. The immediate task is to suppport families and communities beseiged by drug dealing and crime, and coordinate social institutions opposing drug use. If we once again reduce drug use to a much lower level in the United States, we must not again revert to extreme punishments, silence or exaggeration.

Finally, we must recognize that the decline phase contains the potential for serious public policy errors. The reduction in drug use earlier this century did not proceed smoothly but rather was tarnished with prejudice and overkill. For example, although both Blacks and Whites used cocaine around the turn of the century, the drug became, in the popular mind, closely linked with Black hostility to Whites in the South. Since that period coincided with the peak of lynching and the removal of voting rights from Blacks, cocaine served as a chemical excuse for

repression. The fear of drugs can be so extreme, perhaps intensified by the frustrating slowness of decline, that drug use becomes a reason for almost any negative social activity. Drug use can also be ascribed to a whole group, like Southern Blacks before World War One, with little appreciation of how unfair or how inaccurate such labelling might be. We cannot foget that even if drugs were eliminated from the inner-cities, the landscape of poor education and lack of opportunity would remain.

With this in mind, we should be concerned that as middle-class drug use declines and antagonism to drugs grows, which apparently is happening, the inner cities of our nation are not written off as a collection of drug users unworthy of support and investment by more abstinent Americans. The middle-class are the earliest to turn against drugs when drugs interfere with homelife or employment. The reasons for this gradual antagonism toward drugs, though, rests in large part on the goals of work, home and education. To the extent this is absent among the inner city residents while drug-dealing remains an available employment opportunity, we cannot be optimistic that drug use will decline there at the same rate as in middle America. We must understand that in many ways, the best attack on drug abuse is to provide a community in which drug use is irrelevant, a handicap in the path toward satisfying personal goals.

A second concern is that our anti-drug attitude will lead to excessive and ill-informed drug testing in our search for drug users. When the vast majority of Americans are anti-drug, our judgment may be skewed so that we engage in overkill, causing problems rather than resolving them.

A third concern is that basic research into drugs will lose steady funding in a trend toward law enforcement and a conviction that the only important goal is separating people from drugs. There is an enormous amount we do not understand about drug and bodily reactions. We should provide reasonable research support that is steady over the years and not subject to the swings of funding which have characterized past years.

Finally, another reaction to a blanket opposition to drugs is the phenomenon of patients refusing pain-killing medication because they have come to see drugs like morphine as too dangerous to accept even in a medical setting. This has been an unpleasant surprise to the staff at such prestigious institutions as the Memorial Sloan-Kettering Cancer Center.

In this brief statement I have been able to touch on only some of the great issues confronting our nation and its drug problem. Although I can empathize with those who out of frustration wish to legalize drugs, I believe the history of America's battles with drugs gives us hope that we can overcome the present difficulties. The fundemental change of attitude toward drugs which undergirds a reduction in demand is currently underway. We must be careful to not let our antagonism get out of hand. We can overcome drugs and achieve a more cohesive, productive nation.

* * *

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Statement by Congressman Robert Garcia
Before the Select Committee on Narcotics Abuse and Control
September 30, 1988

The most controversial issue in our debate on a national drug policy is the issue of legalization. Mr. Chairman, I wanted to be here today to express my concerns about legalization because I believe that decriminalization poses dangerous repercussions for this country - repercussions we simply cannot risk and cannot sustain.

I oppose this idea and urge my colleagues to carefully weigh the consequences. This proposal has also come at a time when public opinion towards drug abuse has taken a positive turn and when the House has just passed a major anti-drug abuse bill, improving existing legislation passed in 1986.

I believe we should put our energies and resources into these measures, confident that we can win the fight against drugs. Even with respect to less controversial drug usage such as tobacco and alcohol, we as a nation are still coming to terms with the tragic social and health risks that these substances present to our nation. I believe that the risks of legalization are just too great.

I applaud Chairman Rangel for holding these hearings. It is very important to fully explore all alternative solutions to the drug problem. I urge, however, special caution concerning such a potentially dangerous public policy initiative.

This hearing represents the responsible and dedicated work of Chairman Rangel and other Members of the House that will continue to be necessary to reach the goal of eliminating drug abuse from our streets and classrooms - from our homes and workplaces. Like so many problems that face our country today, there is surely no one single solution to the problem. That is why I favor a full national commitment for education and prevention programs, treatment centers and effective law enforcement.

As the Representative of the South Bronx in New York City, a congressional district with major narcotics problems, I believe the advocates of legalization are failing to take into consideration a number of factors. The most significant concern that I have about the legalization of drugs is the resulting increase in widespread use of drugs, especially among our youth. This would have a particularly large, negative impact in the inner cities and minority communities.

Minority communities have traditionally carried the bulk of the weight of the nation's social problems. Drug abuse is no exception. Without the present legal restraints, we would face the prospect that more black and Hispanic youngsters would turn to illegal drugs as an escape valve to the social and economic difficulties they are confronted with everyday.

Legalization is no message to be sending our young people and our inner city communities. It is no policy for this nation to adopt. There is no quick and easy solution to this problem:

The war on drugs requires effective education for everyone,

especially high risk populations.

The war on drugs requires effective treatment facilities, especially for inner-city IV drug users.

The war on drugs requires providing better job opportunities, better housing, and better health care. It requires providing hope.

The war on drugs, Mr. Chairman, requires our full commitment to improving the lives of those who need our help the most - these are the people at most risk of drug abuse. We cannot give up on the war on drugs, nor can we give up on the people who have no better alternative available to them today.

I am also troubled by the idea that legalization will deter crime and the criminal element. As long as there are potential users who cannot obtain drugs through legal channels, like underaged children and users without adequate income, there will be pushers and dealers who are only too willing to sell their product. Unless we are willing to legalize all drugs, including those that are proven to be fatal - PCP, LSD or Crack, and unless we are willing to make them available to everyone we will be faced with criminal activity and youth involvement.

Legalization also raises the question whether police officers, airline pilots, truck drivers, physicians or participants in potentially hazardous occupations should be subject to special restrictions or testing. It also fails to recognize the incidences of AIDS resulting from IV drug use and infant addiction resulting

from drug abuse among pregnant women. Legalization is not the answer to the drug problem. It is instead a response developed in frustration that will add to, not detract from, the problem. We cannot surrender to this menace at a time when we have not yet devoted the maximum effort and resources towards prevention, education and enforcement.

The tide in America is changing. The fight to eliminate dangerous drugs from our society is a long and difficult struggle that can and will be acheived. I do not argue against discussing all possible solutions to the drug problem, but we have just begun the war on drugs and we should not give up now. Nor should we introduce the uncertainty of legalization to an already complex and serious problem:

There are too many unknowns.

There is too much at stake.

There are too many lives to be lost to addiction.

Mr. Chairman, I thank you for the opportunity to speak before the Select Committee this morning. I also commend you for your dedication to this problem. It requires our full commitment and involvement.

TESTIMONY

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL
U.S. HOUSE OF REPRESENTATIVES

Legalization of Illicit Drugs: A Position In Opposition
The Workplace Perspective

by
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September 29, 1988

Mr. Chairman, fellow panelists, and those assembled, thank you for inviting me to testify today on this important issue . I shall address the question of illicit drug legalization from the arena in which I see a very serious aspect of the problem - the workplace. I shall provide a few specific case examples of the impact of employee drug addiction, give you facts about drug abuse in the workplace and why legalization is not a good answer, and I will then submit my recommendations for solution to the Committee for consideration.

However, before presenting my testimony I would like to take a few moments to give you my background so that you will understand my position in this testimony. It is important to make clear that I am speaking as an individual and not as a representative of the University of Maryland or of any company for which I consult. As a Professor at the University of Maryland School of Social Work I direct the Employee Assistance Program (EAP) specialization which concentrates upon employees' personal problems and their impact on job performance. From 1979 to 1984, I developed and directed the model federal employee assistance program for the U.S. Department of Health and Human Services (USDHHS) within the office of the Secretary. I am also a consultant specializing in the design and evaluation of employee assistance programs for a variety of public agencies, national corporations as well as small businesses. My clients include large Fortune 500 companies as well as federal agencies such as the

Internal Revenue Service. My latest book, published in 1987, Drug Free Workplace develops a model for creating a drug-free workplace.(1)

In my unique position as an EAP evaluator, I have reviewed as part of a team of national experts in psychology and psychiatry thousands of EAP case records which dramatically reflect the destructive effects of drug abuse upon individual lives and industry. They include life-threatening conditions, child-abuse, family discord, violence and health problems that are directly attributable to drug use. The following cases typically represent employees with addiction problems in the American workplace throughout each of the states in our country. They are real life examples taken from my consulting work. Legalization will cause more of the same, resulting in an impossible situation for American business.

Cases:

Case #1 - A public transportation driver, referred by management because of an accumulation of bad driving points. The employee admitted to illicit drug use, illicit drug distribution and gambling. There were additional problems of weight control, family conflict and employee's own awareness of an inability to function on the job. [The EAP provided drug and psychiatric evaluation and treatment.]

Case #2 - A subway maintenance worker, self-referred and seeking

help for alcohol and cocaine problems which culminated in the break-up of his 15 year marriage. This person called an EAP counselor after he had started drinking - he stated that he did not want to live and wanted to kill his supervisor.

[EAP provided immediate treatment and notification of the supervisor of the potential danger.]

Case #3 - An air traffic controller, self-referred because he had been arrested for a felony and public intoxication charge. There had been continuous problems with the law and personal finances. The employee's roommate was a cocaine user which resulted in violent arguments. He was planning to move out.

~~[EAP referred the employee to in-patient~~ treatment for ~~alcoholism.~~]

Case #4 - A data processor who was referred by her supervisor for poor job performance revealed during counseling that she has to care for her grandchildren because her daughter has become a cocaine addict. The daughter goes on "rampages" threatening to kill her and the children. The stress of the situation and responsibilities had made it impossible for her to concentrate on job assignments.

[EAP counseled employee and assisted her in obtaining treatment for her daughter as well as child care for the grandchildren.]

3

Case #5 - Female employee with a security clearance who lived with her alcoholic father came in for counseling. She described her father as "violent - (he had) shot (his) wife." Although there is no further explanation in the case of what happened to the mother, the employee revealed during counseling that the father is "doing to the daughter what he did to the mother except (he) doesn't hit her."

[The company's EAP was requested to give special attention to this employee and her problems.]

Facts:

In previous testimony before this Committee in September, 1984, I stated that I had seen a dramatic increase in drug programs in industry. As evidenced by the described cases, today there is a greater need for even more programs.

It is critical to recognize that:

- a majority of drug abusers (of both legal and illicit drugs) are in the workplace
- 19-25 year olds are the most frequent users of cocaine, with 25-35 year olds being the second most frequent user group (according to NIDA's recent Household Survey)
- the workplace bears the effects as well as the cost of illicit and legal drug abuse by paying escalating health insurance bills
- alcohol (a legal drug) is still the primary drug of abuse in the workplace
- prescription drugs (also legal) are the second largest group of drugs abused by the American worker

- many of the nation's costly industrial problems which result from drug abuse are increasing - absenteeism, excessive sick leave, accidents, rising health benefits claims and increased worker's compensation claims. Legalization will not stop these costs to industry; it will increase them.

- the workplace is being forced to address the issue head on. Companies are investing in EAPs, drug testing and whatever else our so-called experts recommend. However, the workplace cannot afford any more drug users. The economic costs and loss of productivity are too high.

Solutions:

Control of addiction cannot be legislated either through permissiveness or restriction. Those who contemplate legalization do so from a position of frustration. More than two-thirds of the funds for the "war on drugs" are spent on law enforcement, and less than one-third on education and treatment. The nation has taken the posture of "control reduction" rather than "demand reduction." As a nation the United States needs to concentrate on the demand side.

We must educate our people to the dangers of drugs as we have done with the harmfulness of tobacco. Recent studies by Cook and Harrell presented at the NIDA Conference on the Evaluation of Industrial Drug Programs in October, 1988 revealed that few companies with health promotion programs stress drug education.(2) IBM Corporation stands as an outstanding exception. In the interest of full disclosure, I should state that I had the privilege of designing IBM's drug and alcohol educational program which is offered not only to all its employees, but also to their family

members throughout the country.

Substantive training programs are needed immediately throughout the nation. It seems unbelievable that schools of medicine, social work and pyschology rarely require a course in alcohol and drug addiction. Today, fewer schools of psychology require a course in drug addiction than in the 1950's. Even the Council on Social Work Education, the accrediting board for schools of social work, does not require a single course in addiction for Master of Social Work candidates.

All managers and supervisors need training in alcohol and drug abuse. This is the only sensible way for them to understand that drug abuse is right there in front of them (and they deny and cover up as much as the addicted employee).

We need EAPs that concentrate on reaching drug and alcohol abusing employees early. Companies have to reappraise their EAP contracts, place the emphasis upon alcohol and abuse cases, and require that only counseling staff with a minimum of two years' training in alcohol and drug abuse be involved in the EAP.

There must be new funds for meaningful treatment, especially for out-patient programs. At USDHHS we funded with Blue Cross the out-patient model of treating alcohol and drug addiction at the worksite. We used DHHS offices for counseling federal employees at night. Employees could continue to work during the day and there was no need for their co-workers to know they were being treated. The average length of treatment with this model was six months with stringent attendance requirements.

These are but a few examples of what should and can be done. We have not yet begun to tap into our vast resources to solve this national problem of addiction.

Finally my strong opposition to legalization stems from the realization that by legalizing illicit drugs we accept the inevitability that use will increase. In my opinion this approach cannot be reconciled with ethical principles because it would be implemented with recognition of the increased personal and social destruction connected with drug abuse that would result. We, as a civilized society, are responsible for preventing disease and destruction - not spreading them.

1 Masi,D., Drug Free Workplace: A Guide for Supervisors, Buraff Publications, Inc., Washington, D.C., 1987.

2 Cook, R. and Harrell, A., "Drug Abuse Among Working Adults: Prevalence Rates and Recommended Strategies," Health Education Research: Theory and Practice, Vol.2, No.4, 1987, pp. 353-59.

TESTIMONY ON THE LEGALIZATION OF DRUGS

SELECT COMMITTEE ON NARCOTICS

SEPTEMBER 30, 1988

LAWRENCE S. BROWN, JR. MD, MPH

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MR. CHAIRMAN:

PLEASE LET ME OFFER MY MOST SINCERE GRATITUDE FOR THE OPPORTUNITY TO ADDRESS THIS ISSUE FROM THE VANTAGE POINT OF A PRIMARY HEALTH CARE PROVIDER. FEW HOSPITALS CAN PROFESS A GREATER EXPERIENCE THAN HARLEM HOSPITAL WITH MEETING THE CHALLENGES OF ILLICIT OR LICIT PSYCHOTROPHIC DRUG USE. BECAUSE OF HARLEM HOSPITAL'S LONG LEGACY OF COMMUNITY SERVICE TO ITS LARGELY ECONOMICALLY DISENFRANCHISED COMMUNITY, IT IS ESPECIALLY IMPORTANT THAT WE SHARE WITH YOU, AND THE OTHER MEMBERS OF THE SELECT COMMITTEE, OUR PARTICULAR EXPERIENCES. WHILE DRUG ABUSE KNOWS NO COLOR, RACIAL, SEXUAL, OR ECONOMIC BARRIERS, ITS PREVALENCE IN THE HARLEM COMMUNITY IS GREAT AND THE IMPACT OF DRUG ABUSE UPON THE CITIZENS OF HARLEM REPRESENTS, WITHOUT QUESTION, A MAJOR PUBLIC HEALTH PROBLEM.

DISCUSSIONS OF THE LEGALIZATION OF ONE OR MORE OF THE PRESENTLY ILLICIT DRUGS ARE STIMULATED, AT LEAST IN PART, BY TWO RELATED FACTS. ONE IS THE MOUNTING EVIDENCE THAT THE CURRENT RESPONSE OF THE AMERICAN SOCIETY TO DRUG ABUSE HAS BEEN SHAMEFULLY INADEQUATE. THE SECOND, IS THE HYPOTHESIS THAT LEGALIZATION REPRESENTS A REASONABLE ALTERNATIVE TO THE CURRENT AMERICAN RESPONSE TO DRUG ADDICTION. I WOULD LIKE TO ADDRESS THESE FACTS SEPARATELY.

I AM GOING TO LIMIT MY REMARKS TO PUBLIC HEALTH OR MEDICAL CARE ISSUES, NOT BECAUSE THEY ARE NECESSARILY THE MOST CRITICAL AREAS FOR CONSIDERATION BY THIS HEARING PROCESS, BUT RATHER BECAUSE THERE ARE MANY OTHER INDIVIDUALS AND PERSONS OF VARIOUS LEVELS OF EXPERTISE WHO ARE ARGUABLY MORE VERSED IN THE SOCIAL, ECONOMIC, AND CRIMINAL IMPLICATIONS OF DRUG ABUSE. FROM THE PUBLIC HEALTH PERSPECTIVE, ONE CAN MEASURE THE EFFECTIVENESS OF THE AMERICAN POLICIES DIRECTED AT DRUG ABUSE BASED UPON THE PREVALENCE OF CONSUMPTION OF THESE PSYCHOTROPHIC SUBSTANCES AND/OR THE PREVALENCE OF DISEASE AND DEATH DUE TO THE USE OF THESE AGENTS. I CONTEND THAT WE DO NOT TRULY KNOW THE EXTENT OF USE OF THESE SUBSTANCES. CURRENT DATABASES TO ASCERTAIN THE PREVALENCE OF DRUG ABUSE ARE EITHER BIASED BY VIRTUE OF THEIR SELECTION METHODOLOGY OR SO ATROPHIED DUE TO INADEQUATE MAINTENANCE SO AS TO COMPROMISE THE RESULTS THAT MAY BE DERIVED FROM THEM. FOR EXAMPLE, ANNOUNCEMENTS ABOUT THE PREVALENCE OF DRUG ABUSE BASED UPON SURVEYS CONDUCTED AMONG HIGH SCHOOL STUDENTS CAN NOT BE TRULY REPRESENTATIVE AS TO WHAT IS OCCURRING AMONG ADOLESCENTS WHEN IN SOME URBAN CENTERS HIGH SCHOOL DROPOUTS (WHO ARE NOT SURVEYED) MAY BE THE MOST PRONED TO USE ILLEGAL OR LEGAL DRUGS. EVEN SO, IT CAN HARDLY BE SAID THAT THE UNITED STATES IS MAKING MAJOR GAINS IN RESPONSE TO DRUG ABUSE WHEN ONE PSYCHOTROPHIC IS BEING MERELY REPLACED BY ANOTHER.

IF ONE WERE ON THE OTHER HAND TO LOOK AT THE PREVALENCE OF SCIENTIFICALLY DOCUMENTED MEDICAL CONSEQUENCES OF DRUG ADDICTION AS A GAGE OF THIS SOCIETY'S RESPONSE, THE UNEQUIVOCAL CONCLUSION WOULD REMAIN THAT AMERICAN POLICY TO ADDRESS DRUG ABUSE IS A FAILED POLICY. AS MEDICAL PROVIDERS AT HARLEM HOSPITAL WE SEE A CONTINUOUS PARADE OF PATIENTS ADMITTED FOR SUCH

DRUG-RELATED CONSEQUENCES AS CANCER, HEART DISEASE, PNEUMONIA, AND MENINGITIS. A SIGNIFICANTLY LARGE NUMBER OF THE PATIENTS WITH KIDNEY FAILURE NEEDING DIALYSIS A HARLEM HOSPITAL HAVE AN UNDERLYING DIAGNOSIS OF DRUG ABUSE AS THE CAUSE OF THEIR KIDNEY DISEASE. IF THESE EXAMPLES OF DISEASE AND ILLNESS WERE NOT ENOUGH, THE LATE SEVENTIES HAS USHERED IN WHAT IS PRESENTLY ONE OF THIS NATION'S MOST PRESSING PUBLIC HEALTH PROBLEM, THE ACQUIRED IMMUNODEFICIENCY SYNDROME AND OTHER MANIFESTATIONS OF INFECTION WITH THE HUMAN IMMUNODEFICIENCY VIRUS (HIV). MANY OF THESE MEDICAL COMPLICATIONS OF DRUG ABUSE HAVE SERIOUS MEDICAL IMPLICATIONS EVEN FOR THOSE OF US WHO DO NOT USE THESE PSYCHOTROPHIC SUBSTANCES. FOR EXAMPLE, THE SCIENTIFIC LITERATURE ADEQUATELY DOCUMENTS A GREATER RISK OF TUBERCULOSIS AMONG THE DRUG ADDICTED THAN AMONG THE GENERAL POPULATION FOR A NUMBER OF REASONS. BECAUSE TUBERCULOSIS INFECTION DOES NOT REQUIRE INTIMATE CONTACT, IT IS NOT SURPRISING TO FIND THAT MANY COMMUNITIES WITH A HIGH PREVALENCE OF TUBERCULOSIS ALSO HAVE A CONSIDERABLE PREVALENCE OF DRUG ABUSE.

AIDS REPRESENTS ANOTHER EXAMPLE OF HOW DRUG ABUSE HAS AN IMPACT BEYOND THE PERSON USING THE ILLICIT SUBSTANCES. WHILE INTRAVENOUS (IV) DRUG USE REPRESENTS ONLY THE SECOND MOST FREQUENT BEHAVIOR ASSOCIATED AIDS CASES REPORTED TO THE CENTERS FOR DISEASE CONTROL, IV DRUG USE IS THE MOST CRITICAL FACTOR RESPONSIBLE FOR THE PREVALENCE OF AIDS AND HIV DISEASE AMONG ETHNIC/RACIAL MINORITIES, WOMEN, AND CHILDREN. EVEN MORE POIGNANTLY, OF THE PERSONS WITH AIDS ACQUIRED BY HETEROSEXUAL TRANSMISSION, FULLY SEVENTY PERCENT ADMIT THAT THEIR SEX PARTNER USED IV DRUGS.

WHILE MY TESTIMONY THUS FAR SUPPORTS FULLY THE PREMISE THAT FEDERAL DRUG POLICY IS INADEQUATELY RESPONSIVE, I AM NOT PREPARED TO SUPPORT LEGALIZATION AS A MORE EFFECTIVE OPTION. TO THE CONTRARY, LEGALIZATION, IN MY OPINION, DOES NOT CONFRONT THE REASONS WHY THE UNITED STATES IS UNSUCCESSFUL IN RESPONDING TO DRUG ABUSE. PLEASE ALLOW ME TO ENUMERATE SOME OF THESE REASONS. AS AN HEALTH CARE PROVIDER, I AM APPALLED AT HOW WE AS A NATION CAN RECONCILE THE INDIRECT SUBSIDY OF TOBACCO, THE LEADING CAUSE OF DRUG-RELATED MORBIDITY AND MORTALITY, AND YET EXPECT OUR YOUTH TO BE RESPONSIVE TO OUR "SAY NO" CAMPAIGNS.

THE STIGMA ATTACHED TO DRUG ABUSE OR TO THOSE WHO USE DRUGS HAMPERS OUR UNDERSTANDING OF THIS MEDICAL DISORDER AND OUR RESPONSE. IN NEW YORK STATE AND MANY OTHER STATES IN THIS NATION, THE STATE DRUG ABUSE AUTHORITY RESIDES OUTSIDE THE STATE PUBLIC HEALTH AUTHORITY. IF DRUG ABUSE IS NOTHING ELSE, IT IS A MAJOR PUBLIC HEALTH PROBLEM THAT SHOULD BE APPROPRIATELY CONSIDERED IN THE DEVELOPING PUBLIC HEALTH INITIATIVES AND IN DETERMINING HEALTH STATUS AND NEEDS. EVEN AT THE FEDERAL LEVEL, FRAGMENTATION IN EFFORT ALSO HINDERS THE INCLUSION OF DRUG ABUSE IN THE DETERMINATION OF HEALTH STATUS INDICATORS OR IN DETERMINING HEALTH MANPOWER NEEDS. THE PAUCITY OF NATIONAL HEALTH SERVICE CORPS ASSIGNMENTS FOR PHYSICIANS IN NEW YORK CITY IS REPRESENTATIVE OF THE LACK OF INSIGHT AS TO THE CONTINUING AND INCREASING IMPACT OF DRUG ABUSE IN THIS GEOGRAPHIC LOCATION. MANPOWER CONSIDERATIONS ARE UNFORTUNATELY NOT THE ONLY AREA OF HEALTH THAT CRIES FOR A MORE APPROPRIATE FEDERAL RESPONSE. AS A PHYSICIAN PERFORMING HOSPITAL WARD ATTENDING FUNCTIONS DURING THIS MONTH, IT IS MOST DISTURBING TO NOT BE ABLE TO PROVIDE INTENSIVE CARE

SERVICES TO PATIENTS IN NEED, SORELY BASED ON THE FACT THAT THE NUMBER OF HOSPITAL BEDS AVAILABLE ARE A LIMITED FEW. I CAN NOT COMPREHEND HOW ANY PUBLIC HEALTH AUTHORITY, IF IT TRULY CONSIDERED THE PREVALENCE AND MORBIDITY ASSOCIATED WITH DRUG ABUSE, CAN ALLOW SUCH A STATE OF AFFAIRS TO CONTINUE TO EXIST. IT IS ALSO UNCLEAR AS TO WHY THERE IS NOT GREATER EMPHASIS ON PRIMARY MEDICAL CARE FOR THE ADDICTED ON-SITE AT DRUG TREATMENT CLINICS. THIS WOULD BE A PERFECT OPPORTUNITY TO PROVIDE PREVENTATIVE SERVICES TO A POPULATION THAT IS NOT TRADITIONALLY PROVIDED THESE SERVICES IN THE TYPICAL MEDICAL SETTINGS FOR A NUMBER OF REASONS.

LEGALIZATION IS NOT GOING TO ERASE THE FOREGOING PROBLEMS. IN FACT IF WE LEARN ANYTHING FROM THE PROHIBITION ERA AND THE ENGLISH HEROIN EXPERIENCE, EPIDEMIOLOGIC EVIDENCE POINTS-OUT THAT MEDICAL CONSEQUENCES SECONDARY TO ALCOHOLISM (SUCH AS CIRRHOSIS) ACTUALLY DECREASED AND THE MEDICAL CONSEQUENCES OF DRUG ADDICTION INCREASED IN ENGLAND DURING THE YEARS WHEN HEROIN WAS LEGALLY AVAILABLE. GIVEN THE HARLEM HOSPITAL EXPERIENCE, WHERE THE MEDICAL CONSEQUENCES OF THE USE OF THESE SUBSTANCES OCCURS AT A DISPROPORTIONATELY GREATER RATE, MY RESPONSE TO DRUG LEGALIZATION WOULD NECESSITATE AN EMPHATIC NO.

WHAT I DO SAY YES TO IS A RECIPE FOR THIS COUNTRY THAT INCLUDES THE FOLLOWING:

1. THIS COUNTRY MUST DEVELOP POLICY THAT CONSIDERS DRUG ABUSE IN THE SAME VEIN THAT IT CONSIDERS OTHER MAJOR HEALTH PROBLEMS, SUCH AS DIABETES, HEART DISEASE, OR HYPERTENSION. THIS MEANS THE

ENCOURAGEMENT OF HEALTH PROFESSIONAL SCHOOLS TO INCLUDE DRUG ADDICTION IN THEIR CURRICULA, ENCOURAGEMENT OF STATES TO INCLUDE THEIR DRUG ABUSE AUTHORITY WITHIN THE STRUCTURE OF THEIR PUBLIC HEALTH AUTHORITY, AND THE INCLUSION OF THE PREVALENCE OF DRUG ABUSE AS A HEALTH STATUS INDICATOR IN THE HEALTH PLANNING PROCESS.

2. EVEN GREATER EMPHASIS IS NEEDED TOWARD PRIMARY AND SECONDARY INTERVENTIONS IN CONTROLLING THE SPREAD OF DRUG ADDICTION. PRIMARY PREVENTION EFFORTS WILL NECESSITATE TOUGH DECISIONS AS TO HOW TO ADDRESS THE POOR SOCIOECONOMIC CONDITIONS IN MANY URBAN SETTINGS. SECONDARY INTERVENTIONS WILL NECESSITATE THE INCREASED AVAILABILITY OF QUALITY DRUG TREATMENT SERVICES WITH PRIMARY CARE SERVICES PROVIDED ON-SITE. ADDITIONALLY, THERE IS A CRITICAL NEED FOR INCREASED INCENTIVES FOR PRACTITIONERS TO PROVIDE MEDICAL SERVICES AS SALARIED PROVIDERS AFFILIATED WITH A HOSPITAL OR CLINIC OR AS PHYSICIANS IN PRIVATE PRACTICE WHERE DRUG ABUSE IS QUITE PREVALENT.

MR. CHAIRMAN,

THESE DISCUSSIONS ON THE LEGALIZATION OF DRUGS PROVIDES THIS COUNTRY WITH AN EXCELLENT OPPORTUNITY TO EVALUATE THE EFFECTIVENESS OF FEDERAL DRUG POLICY. IT MY OPINION, THAT THESE DISCUSSIONS WILL FAR EXCEED THEIR POTENTIAL IF WE ALSO USE THEM AS AN OPPORTUNITY REASSESS FEDERAL DRUG ABUSE POLICY AND MAKE BOLD STEPS TO CHART A COURSE THAT WILL TRULY TARGET THE FACTORS THAT PROMULGATE THE SPREAD OF DRUG ABUSE AND THAT WILL TRULY ENHANCE THE ABILITIES OF HEALTH CARE PROVIDERS TO PROVIDE THE MEDICAL CARE THAT PERSONS SUFFERING WITH THE DISEASE OF ADDICTION OR DRUG ABUSE-RELATED MEDICAL COMPLICATIONS. AGAIN, I THANK YOU FOR THIS OPPORTUNITY.

STATEMENT OF
DAVID BOAZ
VICE PRESIDENT FOR PUBLIC POLICY AFFAIRS
CATO INSTITUTE
BEFORE THE
HOUSE SELECT COMMITTEE ON NARCOTICS
SEPTEMBER 29, 1988

I'd like to thank Chairman Rangel and the Select Committee for holding these hearings on proposals to legalize drugs. It's time we had a vigorous national debate on whether drug prohibition is working, and these hearings will do much to launch that debate on a rational course.

Let me start my discussion of drug prohibition with the following quotation: "For thirteen years federal law enforcement officials fought the illegal traffic. State and local reinforcements were called up to help. The fight was always frustrating and too often futile. The enemy used guerrilla tactics, seldom came into the open to fight, blended easily into the general population, and when finally subdued turned to the United States Constitution for protection. His numbers were legion, his resources unlimited, his tactics imaginative. Men of high resolve and determination were summoned to Washington to direct the federal forces. The enemy was pursued relentlessly on land and sea and in the air. There were an alarming number of casualties on both sides, and, as in all wars, innocent bystanders fell in the crossfire."

That passage wasn't written recently. It was written about the prohibition of alcohol in the 1920s, and it illustrates a very simple point: Alcohol didn't cause the high crime rates of the 1920s, prohibition did. Drugs don't cause

today's alarming crime rates, drug prohibition does.

What are the effects of prohibition? (Specifically I'm considering drug prohibition here, but the analysis applies to almost any prohibition of a substance or activity people want.) The first effect is crime. This is a very simple matter of economics. Drug laws reduce the number of suppliers and therefore reduce the supply of the substance, driving up the price. The danger of arrest for the seller adds a risk premium to the price. The higher price means that users often have to commit crimes to pay for a habit that would be easily affordable if it was legal. Heroin, cocaine, and other drugs would cost much less if they were legal. Experts estimate that at least half of the violent crime in major U.S. cities is a result of drug prohibition.

Crime also results from another factor, the fact that dealers have no way to settle disputes with each other except by shooting each other. We don't see shoot-outs in the automobile business or even in the liquor or the tobacco business. But if a drug dealer has a dispute with another dealer, he can't sue, he can't go to court, he can't do anything except use violence.

And then the very illegality of the drug business draws in criminals. As conservatives always say about guns, if drugs are outlawed, only outlaws will sell drugs. The decent people who would like to be selling drugs the way they might otherwise

sell liquor will get squeezed out of an increasingly violent business.

The second effect of prohibition is corruption. Prohibition raises prices, which leads to extraordinary profits, which are an irresistible temptation to policemen, customs officers, Latin American officials, and so on. We should be shocked not that there are Miami policemen on the take, but that there are some Miami policemen not on the take. Policemen make $35,000 a year and have to arrest people who are driving cars worth several times that. Should we be surprised that some of this money trickles down into the pockets of these policemen?

A third effect, and one that is often underestimated, is bringing buyers into contact with criminals. If you buy alcohol you don't have to deal with criminals. If a student buys marijuana on a college campus, he may not have to deal with criminals, but the person he buys it from probably does deal with criminals. And if a high school student buys drugs, there is a very good chance that the people he's buying drugs from--the people who are bringing drugs right to his doorstep, to his housing project, to his schoolyard--are really criminals; not just in the sense that they are selling drugs, but people who have gone into the drug business precisely because it's illegal. One of the strongest arguments for legalization is to divorce the process of using drugs from the process of getting involved in a criminal culture.

A fourth effect is the creation of stronger drugs. Richard Cowan in National Review has promulgated what he calls the iron law of prohibition: The more intense the law enforcement, the more potent the drugs will become. If a dealer can only smuggle one suitcase full of drugs into the United States or if he can only drive one car full of drugs into Baltimore, which would he rather be carrying--marijuana, coca leaves, cocaine, or crack? He gets more dollars for the bulk if he carries more potent drugs. An early example of that is that a lot of people turned to marijuana when alcohol became more difficult to get during Prohibition. A few years after Prohibition began in the 1920s there began to be pressures for laws against marijuana. When one advocates drug legalization, one of the standard questions is, "Well, marijuana is one thing, maybe even cocaine, but are you seriously saying you would legalize crack?" And the answer is that crack is almost entirely a product of prohibition. It probably would not have existed if drugs had been legal for the past 20 years.

The fifth effect of prohibition is civil liberties abuses. We have heard a lot recently about Zero Tolerance and the seizure of cars and boats because a small amount of marijuana or cocaine is allegedly found. I recall a time in this country when the government was only allowed to punish someone after he got convicted in a court of law. It now appears that the drug authorities can punish an American citizen by seizing his

car or his boat, not even after an indictment--much less a conviction--but after a mere allegation by a police officer. Whatever happened to the presumption of innocence?

There is an inherent problem of civil liberties abuses in victimless crimes. Randy Barnett wrote about this in the Pacific Research Institute book Dealing with Drugs; the problem is that with victimless crimes, such as buying drugs, there is no complaining witness. In most crimes, say robbery or rape, there is a person who in our legal system is called the complaining witness: the person who was robbed or raped, who goes to the police and complains that somebody has done something to him or her. In a drug purchase, neither party to the transaction complains. Now what does this mean? It means there are no eyewitnesses complaining about the problem so the police have to get the evidence some other way. The policemen have to start going undercover, and that leads to entrapment, wiretapping, and all sorts of things that border on civil liberties abuses--and usually end up crossing the border.

The sixth effect of prohibition is futility. The drug war simply isn't working. Some say that much of today's support for legalization that we're seeing from politicians and others is merely a sign of frustration. Well, frustration is a rational response to futility. It's quite understandable why people have gotten frustrated with the continuing failure of new enforcement policies.

If a government is involved in a war and it isn't winning, it has two basic choices. The first is escalation, and we've seen a lot of proposals for that.

New York Mayor Ed Koch has proposed to strip-search every person entering the United States from South America or Southeast Asia. Members of the D.C. City Council have called for the National Guard to occupy the capital city of the United States. Congress has bravely called for the death penalty for drug sellers.

Jesse Jackson wants to bring the troops home from Europe and use them to ring our southern border. The police chief of Los Angeles wants to invade Colombia.

The White House drug adviser and the usually sensible Wall Street Journal editorial page have called for arresting small-time users. The Journal, with its usual spirit, urged the government to "crush the users"; that's 23 million Americans.

The Justice Department wants to double our prison capacity even though we already have far more people in prison as a percentage of our population than any other industrialized country except South Africa. Former attorney general Edwin Meese III and others want to drug test all workers.

The Customs Service has asked for authorization to "use appropriate force" to compel planes suspected of carrying drugs to land. It has clarified, in case there was any doubt, that yes, it means that if it can't find out what a plane is up to,

it wants the authority to shoot the plane down and then find out if it's carrying drugs.

These rather frightening ideas represent one response to the futility of the drug war.

The more sensible response, it seems to me, is to decriminalize--to de-escalate, to realize that trying to wage war on 23 million Americans who are obviously very committed to certain recreational activities is not going to be any more successful than Prohibition was. A lot of people use drugs recreationally and peacefully and safely and are not going to go along with Zero Tolerance. They're going to keep trying to get drugs. The problems caused by prohibition are not going to be solved by stepped-up enforcement.

So how exactly would we legalize drugs? Defenders of drug prohibition apparently consider that a devastating question, but it doesn't strike me as being particularly difficult. Our society has had a lot of experience with legal dangerous drugs, particularly alcohol and tobacco, and we can draw on that experience when we legalize marijuana, cocaine, and heroin--as we will, fairly soon, when more Americans come to understand the costs of prohibiting them.

Some critics of prohibition would legalize only "soft" drugs--just marijuana in many cases. That policy would not eliminate the tremendous problems that prohibition has created. As long as drugs that people very much want remain illegal, a

black market will exist. If our goal is to rid our cities of crime and corruption, it would make more sense to legalize cocaine and heroin while leaving marijuana illegal than vice versa. The lesson of alcohol prohibition in the 1920s and the prohibition of other drugs today is that prohibition creates more problems than it solves. We should legalize all recreational drugs.

Then what? When we legalize drugs, we will likely apply the alcohol model. That is, marijuana, cocaine, and heroin would be sold only in specially licensed stores--perhaps in liquor stores, perhaps in a new kind of drugstore. Warning labels would be posted in the stores and on the packages. It would be illegal to sell drugs to minors, now defined as anyone under 21. It would be illegal to advertise drugs on television and possibly even in print. Committing a crime or driving under the influence of drugs would be illegal, as with alcohol.

It is quite possible that such a system would be less effective in attracting young people to drug use than the current system of schoolyard pushers offering free samples. Teenagers today can get liquor if they try, and we shouldn't assume that a minimum purchasing age would keep other drugs out of their hands. But we don't see many liquor pushers peddling their wares on playgrounds. Getting the drug business out of our schoolyards and streets is an important benefit of legalization.

It is likely that drug use would initially increase. Prices would be much lower, and drugs would be more readily available to adults who prefer not to break the law. But those drugs would be safer--when's the last time you heard of a liquor store selling gin cut with formaldehyde?--and people would be able to regulate their intake more carefully.

In the long run, however, I foresee declining drug use and weaker drugs. Consider the divergent trends in legal and illegal drugs today. Illegal drugs keep getting stronger--crack, PCP, ecstasy, designer drugs--as a result of the Iron Law of Prohibition. But legal drugs are getting weaker--low-tar cigarettes, light beer, wine coolers. About 41 million Americans have quit smoking, and sales of spirits are declining; beer and wine keep the alcohol industry stable. As Americans become more health-conscious, they are turning away from drugs. Drug education could do more to encourage this trend if it was separated from law enforcement.

By reducing crime, drug legalization would greatly increase our sense of safety in our neighborhoods. It would take the astronomical profits out of the drug trade, and the Colombian cartel would collapse like a punctured balloon. Drugs would be sold by Fortune 500 companies and friendly corner merchants, not by Mafiosi and 16-year-olds with BMWs and guns. Legalization would put an end to the corruption that has engulfed so many Latin American countries and tainted the Miami

police and U.S. soldiers in Central America.

Legalization would not solve all of America's drug problems, but it would make our cities safer, make drug use healthier, eliminate a major source of revenue for organized crime, reduce corruption here and abroad, and make honest work more attractive to inner-city youth--pretty good results for any reform.

TESTIMONY OF GLORIA S. WHITFIELD

Select Committee On Narcotics Abuse And Control
Hearing on the Legalization of Illicit Drugs

September 29, 1988

Mr. Chairman, members of this committee and interested persons: I am employed with Rehabilitation Services Administration for the District of Columbia in the capacity of Vocational Rehabilitation Specialist. Rehabilitation Services Administration provides services to handicapped and disabled persons in an effort directed towards getting them back into the workforce. My office is located in the Drug and Alcohol Abuse Section of Rehabilitation Services. Drug addiction and alcoholism are considered disabilities under the codes and policies of Rehabilitation Services Administration and persons suffering from such are entitled to certain services. My caseload of clients, during a fiscal year, sometimes exceed 200 persons, from referral sources such as ADASA, Halfway Houses around the District, Hospitals, RAP, Inc. and other treatment regimes located in D.C. In addition, I receive walk-in referrals, i.e. persons seeking rehabilitation services on their own initiative. Persons seeking assistance are suppose to be drug free, completed or currently in residential or outpatient treatment and ready for the vocational rehabilitation process. Drug addiction and alcoholism causes unpredictable behavior in individuals, and as a result, only a small percentage of my clients successfully complete the rehabilitation process. My training has afforded me the expertise of working with persons suffering from many different types of disabilities. But, as a Vocational Rehabilitation specialist in the drug and alcohol abuse section, I tremble to think what my caseload would be if drugs were legalized.

Our government in America is often accused of fixing things that are not broken and/or enhancing a problem rather than finding a viable solution to eliminate the problem. We all agree that drug abuse is a serious problem in our midst, but how can anyone who has any insight

or, any perception on drug addiction, believe that by legalizing drugs we would solve the problem of drug abuse. Or perhaps I'm naive in in believing that the problem of drug abuse holds even the slightest interest to those persons who would push for legislation to legalize drugs. Perhaps the main interest is in taking the mega profit out of the sale of illicit drugs. Well, to me, that's the same as our government saying "hell, I Want A Piece Of That Action". Why, it would make Uncle Sam the biggest dope pusher of all time. Is that not truly adding to our problem? Think about it.

Drug abuse is killing generations of young Americans by destroying their minds, their motivation to succeed, and their will. Addicts are motivated only towards achieving their next high. And drug addiction does not discriminate between my kids or your kids, race or religion, young or old, rich or poor. Families are being destroyed, generations of families are being destroyed and America is being weakened. Yet, America is assisting in it's own destruction. Everytime we make a deal with, or support in any way those countries whose main source of income comes from exporting cocaine and heroin, we are aiding and abetting in self destruction. Legalization of drugs would simply make the demand for their product even more appealing to such countries. Our farmers are catching hell trying to grow tobacco and collard greens, so where are we going to get the poppies and coca plants, and cannibis needed to process heroin, cocaine and marajuana? We would have to import. America would suddenly become partners with Noriega in the distribution of drugs, the Golden Triangle would become super powers and all of those other little countries whose gross national product is heroin and cocaine would suddenly have access to nuclear warheads. A gross exageration? Not really! Think about it.

Where do we draw the line? Uppers and downers, amphetamines and barbiturates can be found in most households medicine cabinets. Drugs are already legal in this country and fraudulent prescriptions are big business. Yet, some of our legislators will say, "to hell with it, lets make it even easier for em to drop off, beam up and freak out". But, keep in mind, those "em" that they're talking about happens to be our future because America's future rests with our young. Legalization of drugs calls for a forecasts of a very dim future, it would insure America a future of space cadets that NASA wouldn't touch. Nor would Med School, Law School, Science and Technology, Aviation,or any other institute of higher learning and achievement, because, drug addicts are detrimental to themselves and to others. Drug addiction is a sickness in which there would not be enough hospitals in America to treat if legalization existed.

Then too, what drugs are we talking about legalizing?? Heroin? Cocaine? What about PCP? Maybe a little Acid? Where will the line be drawn, and why would it be drawn there? There are many people who fought like hell against the hint of legalizing reefer, yet, suddenly, the thought of putting the real thing on the market isn't too far fetched. It's really frightening. Have we seriously looked at the long and short term ramifications of such a move? First of all, Doctors would be in demand like never before even though there is a shortage of Doctors, and not to mention nurses, all across this country. Little clinics would spring up like liquor stores, on every corner, ready to distribute prescriptions for poison. The wino's we see every morning, on corners in front of liquor stores waiting for them to open, would hold no comparison to the line of dope fiends that

would be waiting outside of the little clinics and Doctors offices on any given day. "Hit the pipe", or "Take a fix" and call me in the morning, would become a routine response.

Finally, compared to the percentage of our population who abuse drugs, only a small percentage are as fortunate as I am to find the strength to prevail and overcome my addiction, and to grow. For anyone to speak in favor of any legislation which would legalize this deadly poison in a false attempt to control the supply and demand shows a critical lack of perception and insight into the problem of drug abuse. It further shows an insensitivity equal to those who currently controls the flow of drugs into this country. Legalization of drugs would be one more step towards perpetuation of evil influence over the people instead of a more progressive step towards addressing the socio-economic problems facing the people, such as poverty, lack of education, lack of sufficient health care, lack of adequate housing in poverty stricken communities which are dumping grounds for drug dealers; all of these things which makes a person eager to escape into the tranquil oblivion of drug abuse; teen pregnancy, child abuse, incest, and oh yes, the very rich, but very bored, depression, mental illness, mental retardation; I could go on and on. Not to address these conditions is certainly a sin against mankind, but to add to these problems would be a sin against God because it would be an overt move towards destruction of mankind. Drug abuse weakens the mind and destroys the will of those who fall victim to it. America, should wage a real war against drugs, using any means necessary to prevent, them from entering our ports and crossing our borders. Think about it!

A SCENARIO FOR ENLIGHTENED DRUG POLICY [Copyright 1988, Richard B. Karel]

[Presentation to the Select Committee on Narcotics Abuse and Control, September 29, 1988, U.S. House of Representatives, Washington, D.C.]

I was recommended to this committee because of a scenario originally presented to the Baltimore Commissioner of Health earlier this year. I am a journalist, not a politician or public official. Although my opinions and policy formulations have evolved over 15 years, this particular policy paper was formulated in response to the tough questions posed by Rep. Rangel.

In my unabridged policy paper, I have addressed in great detail regulation, taxation and control of drugs. Let us soberly examine the possibility that a sensible and morally defensible approach to psychoactive substances must focus on legitimate distinctions based upon the intrinsic pharmacology of each substance and the application of regulatory and fiscal mechanisms designed to protect the public health. I believe I share the goals of Rep. Rangel and others, and believe sincerely that current policy is highly counterproductive.

"Legalization" is an emotionally charged word, implying, for many, legitimization. My approach is, in fact, not across the board legalization. Indeed, I suggest that the more dangerous forms of illicit drugs remain prohibited to various degrees, and that we focus on ways of making legally available less harmful forms of some substances. I also recommend restrictions on age, advertising and points of distribution, and, in some instances, rationing amounts sold per person within a set period of time.

In brief, my recommendations are merely a variation on the concept of using both a carrot and a stick. The carrot is making available less harmful forms of certain currently illicit drugs in order to draw people away from more harmful substances. The stick is retention of legal penalties on use and sale of other drugs and forms of drugs.

Whenever the issue of legalizing any of the currently illicit drugs arises, people point with fear to the high costs of alcohol legalization and the supposedly forgotten lessen that despite crime and violence, public health improved dramatically during Prohibition.

There is however, another even more dimly recalled lessen of the Prohibition era, and that is that during the same period we in America were criminalizing alcohol to fight the negative health consequences of abuse. Great Britain was attacking the same problem through a combination of higher taxes, rationing and limited hours of distribution. When the Volstead Act was repealed in America, it did not take long for alcohol use and abuse to rise once again, and along with it alcohol related health problems such as cirrhosis of the liver.

In Great Britain, on the other hand, alcohol related health problems declined steadily during our Prohibition era and leveled off. They have remained relatively low ever since.

Interestingly, the most recent study on cirrhosis in the U.S. indicates a steady decline in the last decade. We are not sure why, but speculation centers on the general American trend toward exercise and health.

In the United States, we have seen education, labeling and enforcement of restricted sales of tobacco to minors greatly cut tobacco use and related health problems. No prohibition is necessary, and few think it advisable.

Let us keep this evidence in mind when we consider regulation and control of illicit drugs. My recommendations are based on the concept of making regulatory distinctions between different drugs and forms of drugs, and applying a combination of fiscal and regulatory mechanisms to protect the public health.

With prohibition concentrated on keeping substances such as crack and PCP away from the public, particularly children, and on keeping clinically controlled drugs from being diverted, law enforcement would finally have both a moral justification and a practical focus working in its favor.

I would be happy to provide examples of specific regulatory approaches during the question and answer period.

Thank you.

A SCENARIO FOR ENLIGHTENED DRUG POLICY

Copyright 1988
Richard B. Karel

[Prepared for House Select Committee on Narcotics Abuse and Control hearing, September 29, 1988]

INTRODUCTION

The suggestion that some form of legalization of illicit drugs be seriously considered has become the focus of serious debate in the last six months. Despite the protestations of some prominent politicians that debating any form of legalization is "zany" or "insane," a variety of perfectly sane, thoughtful and intelligent individuals from various walks of life have emerged in support of this position. Despite the apparent political unpalatability of legalization today, it is neither radical nor unrealistic to suggest that once questions about legalization scenarios are answered in a thoughtful and sytematic way, public perceptions of this issue may shift quickly and fundamentally.

In order to conduct a reasoned and intelligent discussion of this issue, it is necessary to eschew political demagoguery, and to avoid the temptation to brand those who vary with us, whatever stance we may take, as morally obtuse or possessed of ulterior motives.

Support for serious consideration of legalization extends across the political spectrum, and cannot be deemed a conservative or liberal, a democratic or republican, position. I know from personal discussions with police officers and highly placed prosecutors in the United States Department of Justice, that the legalization approach also has supporters in the law enforcement community. Like all supporters of legalization, they have questions about implementation, and like most supporters of legalization, they do not embrace an across the board, libertarian approach where all illicit drugs are placed on a legal footing equivalent to alcohol.

It is my opinion that at some juncture, some form of legalization will become a reality. It is my concern that if we do not carefully consider all the problems inherent in various legalization scenarios, and answer the many questions raised regarding legalization, we may create an unwieldy and incoherent system.

At a drug policy workshop in August under the auspices of Mayor Kurt Schmoke, ethicist Robert Royal made some points that are important when considering approaches to reforming the narcotics laws. First, Royal observed that individual rights are not absolute, and are invariably balanced against perceptions of what benefits the commonweal. Second, good ethics are practical ethics. Third, Royal observed that the notion that morality cannot be legislated is not entirely accurate, pointing to the impact of civil rights legislation in changing public conceptions of what is right and wrong regarding the treatment of minorities. Finally, and not insubstantially, he noted that there is a strong and constant tension between Americans' desire to be protected from a variety of dangers, and their respect for what president Ronald Reagan recently called "the right to march to a different drummer."

I am neither politician nor public official, but I believe that an unwillingness to examine dispassionately evidence bearing on the legalization issue is bad policy, and ultimately a disservice to the public. In some cases, misinformation may temporarily deflect public attention from consideration of legalization as a serious policy option. It will not, however, make the issue go away.

Let me briefly offer two examples of what appear to be at best careless, and at worst, distorted approaches to the legalization issue. In one instance, a prominent northern congressman circulated a letter in which he essentially equated the dangers of PCP and marijuana. In another case, a prominent southern congressman circulated a letter in which he asserted that 75 percent of illicit drug users become addicts, as compared to only 10 percent of alcohol users. I am deliberately avoiding more precise identification, as I have no desire to become involved in what could be construed as ad hominem attacks. I mention these cases, however, to point out that while misinformation may temporarily mislead the public, in the long run it will contribute to a credibility gap when the sources of such misinformation expound on the illicit drug issue.

Everyone with whom I have come in contact agrees with Rep. Charles Rangel that "far too long we have ignored the root cause, failing to see the connection between drugs and hopelessness, helplessness and despair." The suggestion that individuals considering the legalization option are somehow insensitive to that connection, and are ready to write off the disadvantaged youth of the inner city is simply incorrect. Ironically, many proponents of legalization, such as Professor Ethan Nadelmann of Princeton, make a large part of their case precisely on grounds that it is the poor and disadvantaged who are suffering most grievously from an approach that stresses law enforcement over public health.

Another point that has become muddled is the existence of two separate "drug problems." The drug problem of the socio-economically depressed inner cities is indeed linked to hopelessness and despair. Hopelessness and despair, however, do not account for the huge numbers of affluent, middle-class citizens who occasionally use drugs such as cocaine and marijuana on a recreational basis and who otherwise are no different from their non drug using counterparts.

At some level, individuals on both sides of the legalization debate must find common ground with their opponents. If we recognize that we share many goals in common, but differ greatly on how most humanely and practically to accomplish those goals, the rhetoric and sarcasm can be replaced by an attitude of thoughtful listening.

No one has all the answers, but Rep. Rangel, Chairman of the Select Committee on Narcotics Abuse and Control, has done a superb job of posing a host of important questions.

While in the process of preparation of this manuscript, I was warned by a variety of astute individuals that the proposals would be deliberately distorted by Rep. Rangel and others. I was warned that by taking Rep. Rangel's list of questions at face value, and presenting a coherent vision of how legalization might work, I was "falling into his trap." Let me note that I hold Charlie Rangel in the highest regard. He has been a tireless fighter for the rights of the underclass, and a tough but compassionate legislator. It would be most unfortunate for all parties if anything other than a sober and dispassionate consideration of the evidence should occur.

While this manuscript has been adapted with a specific focus towards the September 29 hearings, I have not fundmentally altered any of my recommendations from those made to Mayor Schmoke's August 4 workshop.

As a means of focusing on the very pivotal concerns raised by the prospect of legalization, I begin with a brief restatement of the questions framed by Rep. Rangel.

REP. RANGEL'S QUESTIONS

1. Which narcotic and psychotropic drugs should be legalized? On what criteria should this decision be based?

2. Should narcotic and psychotropic drugs be made available to anyone who wishes to try them or just to people already dependent upon them?

3. Should drugs be available to anyone, including children? Should there be an age requirement and, if so, what age?

4. Would an unlimited supply be made available to habitual users or addicts? Or would they have to pay the market price, even for drugs where an increasing tolerance would require the purchase of ever larger quantities? Could those heavily dependent or addicted work or even hold a job? Or would they resort to crime to support their legal habit and to provide livelihood for themselves and their dependents?

5. Who would provide drugs? Private companies? The government? Would they be provided at cost, for a profit, or be subject to a tax? If taxed, what would be a fair rate?

6. Where would drugs be made available? Pharmacies? Supermarkets? Special shops? Dispensaries? Clinics?

7. Would drug use by employees in certain occupations be proscribed? Since marijuana can remain in the body for weeks after use, would marijuana use by employees in jobs where security and safety are at issue be forbidden even off-duty? What about airline pilots, surgeons, police, firefighters, military personnel, railroad engineers, bus drivers, cross-country truckers, nuclear reactor operators--even Wall Street brokers and teachers?

8. What rate of addiction and dependency would you project if drugs were legalized and thereby cheaper and more readily available? Wouldn't cheap and readily available legal drugs result in more people using more drugs? What would you project the accidental drug-related death rate to be?

9. What is the opinion of medical experts as to the potential effects of legalization? Drug-treatment experts?

10. Have you asked your personal physician whether he would recommend that you, members of your family or anyone experiment with drugs? Would he recommend regular recreational use?

11. Would legalization affect medical insurance rates and the overall cost of health care?

12. Would we be spreading AIDS by having more addicts using more needles?

RESPONSE TO REP. RANGEL [In order of questions listed above]

1. One of the major impediments to rational debate on drug legalization has been what I call the "all or nothing syndrome," i.e., the call to simply legalize all currently illicit drugs and make them available on a basis similar to alcohol. The primary rationales for this extreme approach are, a) philosophical, and b) economic. The philosophical rationale is that an adult should be entitled to use his or her body as he sees fit without government intrusion. The economic rationale is twofold--first, legalization will remove black market profitability, hence ending criminality based on greed, and, second, through taxation, revenues can be raised and earmarked for productive ends including drug treatment and education. I have major problems with this extreme approach, and believe that Rep. Rangel has framed the question properly.

Philosophically, I feel that personal freedom must always be balanced against the broader interests of society. Although drug policy of the last 50 years has ignored the former in favor of the latter, there are legitimate medical and psychological criteria to distinguish inherent social risks involved in use of different psychotropic drugs.

Economically the reasoning appears sound, but again, the risks inherent in use of certain psychotropic drugs may more than offset the benefits of legalizing those drugs. These issues are raised in more detail in Rep. Rangel's other questions and will be addressed in more detail as they are answered.

Here are my suggestions for legalization and regulation of various psychotropic drugs and the criteria I believe are central to making this decision. Supporting references are listed at the end of this summary.

CRITERIA FOR RECOMMENDATIONS

It is worthwhile, from the inception, to state briefly the broad underpinnings for my specific recommendations. I have attempted to avoid basing any recommendation solely upon empirical considerations, and have labeled as opinions statements based upon observation and experience but for which no systematic studies or surveys are available.

In brief, the primary basis for all my suggestions is that public health serve as a primary determinant of the degree of regulatory control for a given psychoactive substance. The rationale for regulation is not that a substance must be absolutely "safe" to all persons under all circumstances, but rather, that the level of risk to the individual and society is manageable within my proposed regulatory structure. Hence, while heavy smoking of marijuana, defined by some researchers as approximately two marijuana cigarettes daily, is hazardous to respiratory health and poses a danger to the fetus in pregnant women, this consumption pattern applies to a small percentage of total users, probably between five and 10 percent. Based on the statistical data, which will be discussed later, there is little reason to believe that this pattern would change significantly after legalization. In particular, the group where most concern is focused--adolescents 18 and under--already have ready access to the drug and appear to be little influenced by its legal status.

Another significant criterion is the degree of social disruption, above and beyond direct biological effects, associated with use of a given drug. This second criterion is unfortunately non-quantifiable, for it is virtually impossible to determine precisely what part of the disruptive impact of some drugs is related to the physiological effects of the substance, and what part is caused by the criminal subculture and vast profits related to their illegality. An assessment must be based on intelligent speculation, and an examination of the historical data. Hence, an assessment must take under consideration what happens if a marijuana smoker drives while impaired, or what impact crack appears to have on the lifestyles, as opposed to the individual health, of habitual users.

In following a pragmatic, as opposed to an ideological approach, I have examined the evidence in a medical, historical and social context. In addition, hovering over all my recommendations is a belief that a revision of the drug laws as described would have a devastating impact on profitability of the current illicit drug business. The cross-cultural data on controlling alcohol consumption without prohibition, particularly the British experience, provides an optimistic referent for my belief that regulation, rather than prohibition, can most effectively minimize the social harms associated with misuse of psychoactive agents.

My regulatory scheme is devised with an eye to eliminating the socio-economic reasons for the existence of a criminal drug subculture. It follows logically that the elimination of most of the criminal subculture now associated with drugs would, ipso facto, function to shield children and adolescents from association with that subculture and exposure to individuals with a vested interest in creating addiction.

I have taken pains to distinguish between different levels of risk associated with different forms and modes of use of different and related psychoactive substances. In this area, there is significant data to support my recommendations. A resort to empiricism is unnecessary.

MARIJUANA

Marijuana (and hashish) should be legalized, taxed and treated similarly to alcohol. Cultivation for personal use should be permitted, perhaps with an annual registration fee. Revenues from taxation would be allocated towards administrative costs of drug regulation and education and treatment of drug addiction.

Widespread assertions to the contrary, there is a significant amount of medical and psychological information on the effects of marijuana. What is equally significant is that the last 20 years have provided us with a social laboratory in which to observe what consequences ensue from widespread use of marijuana and other drugs. The social consequences of widespread marijuana use over the last 20 years appear minimal.

While virtually every other illicit psychoactive substance in widespread use in the United States has a humanly applicable minimum lethal dose, marijuana does not. This is a remarkable fact in and of itself. Despite marijuana's popularity, evidence of dependence is rare (1). A small percentage of people do become dependent on marijuana, and some seek professional help in quitting (2). Overall, however, there is a remarkable absence of habituation with the drug.

Although the data on individuals seeking treatment for marijuana abuse have generally indicated that they are actually being treated for abuse of other drugs (2a), a recent study indicated that there are some individuals dependent on marijuana alone who are seeking treatment (2b).

A study based on 97 marijuana users established a set of criteria, based on an alcoholism model, to define marijuana abuse, as opposed to use. The results indicated that 5.8 percent of the sample displayed most of the attributes necessary to include them in the group of problem marijuana users. It was found that up to 9.3 percent of the total sample indicated some problems related to their marijuana use (2c). Unfortunately, the higher (9.3 percent) figure has recently been cited as indicative of the percentage of marijuana users likely to develop problems with the drug (2d).

To my knowledge, a larger sampling has not been performed in order to establish a probable rate of dependency in marijuana users. While the study cited is worthy of consideration, caution should be exercised in drawing far ranging conclusions until further surveys in this area have been completed. The total population of current marijuana users in the United States, (with "current" defined as use at least once a month) is somewhere between 18 and 24 million people (2e),(2f), which provides additional grounds for caution in generalizing from a sampling of 97 individuals. (The discrepancy in figures is based on the fact that surveys do not include members of the armed forces, people living in college dormitories, group quarters, and institutional populations. The inclusion of students in college dormitories would certainly have a significant impact on current use figures).

One area of concern regarding marijuana is its purported role as a "gateway" drug. The "gateway" theory has replaced the "progression" theory. The latter was the notion that use of one drug, e.g., marijuana, led to use of another drug. The new twist involves the statistical correlation sometimes found between use of marijuana, and subsequent use of other drugs. There are several problems with this gateway concept.

First, the statistical association is often cited out of context to imply that

use of drug X, in this case, marijuana, leads to use of drug Y. It is a thinly veiled effort to revive the "marijuana leads to heroin" theory of yore.

Second, longitudinal studies of cannabis users have not even been consistent on the establishment of simple statistical correlation between use of marijuana and use of other drugs (2g).

Third, where a correlation has been established, the most intelligent explanation of subsequent use of other drugs has been based on personality attributes (2h). A highly publicized study that has since been largely ignored concluded that people who are open to new experience are likely to try marijuana, and, in general, experience more than people who have a less open life style. The architects of this study, which involved a sampling of over 300 college students, concluded that these personality attributes accounted for their finding that the more a person used marijuana, the more likely he was to try one or more other drugs (2i).

A recent study by a Texas A & M psychology professor found a gateway role for use of household inhalants, i.e., such things as spray paint, cleaning fluids, typewriter correction fluids etc., and subsequent abuse of alcohol and other drugs. Since there is no movement underway to ban typewriter correction fluid or spraypaint, it is easier to dispassionately look at the evidence and understand that while use of a substance may correlate statistically with use of other substances, this is not an argument for causality (2j). Similarly, the use of the two legal drugs, alcohol and tobacco, precedes use of all illicit drugs (2k).

Interestingly, an entirely different role for marijuana has been postulated by Dr. Frits Ruter, senior professor of criminal law at the University of Amsterdam. According to Ruter, the Dutch approach is to treat marijuana as a "barrier" drug. This is the actual term Ruter uses to describe the system. The logic is that by selective enforcement of the narcotics laws, emphasizing acceptance of a small legal market in marijuana, and continuing punishment of sale of illicit drugs such as heroin and cocaine, the Dutch hope to establish a barrier between marijuana and other drugs. The result has been a mixed success, with use of marijuana itself declining, use of heroin declining, and use, but not apparent abuse, of cocaine slowly increasing. The Dutch, up to now, have not experienced the crack phenomenon (2l).

Another area of concern involves the impact of marijuana use upon adolescents undergoing puberty. Because animal studies have shown that chronic administration of high doses of THC may (the primary active component of marijuana) effect endocrine functioning, the subject deserves scrutiny. No definite effect on adolescent development has been established. Many of the endocrine effects caused by chronic THC administration in animals either decrease as tolerance develops or are reversible upon cessation of administration (2m). Further research in this area is necessary, with a careful distinction established between risks inherent in heavy versus moderate use at different stages of adolescence.

An analysis of the data indicate the prohibition has been most ineffective precisely in the one area where virtually everyone agrees it is most important--keeping drugs away from children. Although patterns of use have shifted, notably dropping in recent years, recent surveys showed that almost 90 percent of high school seniors continue to find marijuana easily accessible (2n). It is hard to imagine that legalization would have much impact on marijuana use by adolescents.

While marijuana causes a form of intoxication, comparison of driving impairment to that caused by alcoholic inebriation indicates that marijuana causes less severe impairment (3). In fact, even a relatively high dose has little effect on simple reaction time (4), (5). Other aspects of perception crucial to driving skills, such as tracking ability, are impaired (6). No one should drive under the influence of marijuana, although it is clearly the lesser evil when compared to alcohol (6a).

It is worth noting that in one of the most infamous cases in which marijuana use was implicated in a transportation disaster--the January 1987 wreck of a Conrail train that killed 16 people--the engineer, Richy Gates, admitted being intoxicated on alcohol at the time of the collision (6b). In addition, Gates had 11 traffic convictions, two license suspensions, and had been recently arrested for drunken driving while running a red light and a stop sign (6c). Despite these undisputed facts, the focus of the media and subsequent calls for mandatory drug testing of railroad employees focused on marijuana as the causal agent in the disaster.

Marijuana, unlike alcohol, does not appear to cause brain damage or deterioration of the liver, stomach and other organs (7). It does appear to cause unhealthy changes in the lungs, particularly when smoked frequently and in large amounts (8). This effect on the lungs is compounded by use with tobacco (8a), (8b), (8c). Habitual marijuana-only smokers were found to have a signficantly lower baseline level of carboxyhemoglobin compared to tobacco smokers, indicating that marijuana-only smokers have less chronic cardiovascular risk than tobacco smokers (8d).

Marijuana impairs short-term memory and therefore interferes with information processing (9). The effect is transient, disappearing within four to six hours following ingestion.

Marijuana, unlike alcohol, is not correlated with violent and anti-social behavior. In fact, it actually tends to have the opposite effect on most users (10). Police officers on the beat have for years observed that the marijuana user was far less likely to fight than the alcohol user (11).

Marijuana has a long history of medicinal use and a variety of useful properties (12). It is an effective agent in prevention of glaucoma, for mitigation of tremors in multiple sclerosis, and in counteracting the effect of chemotherapeutically induced nausea. This latter effect has been confirmed both anecdotally, (13) and through a variety of clinical studies using marijuana derivatives (13a), (13b), (13c), (13d).

A major breakthrough in the recognition of marijuana's medical usefulness and safety came on September 6 [1988] when a Drug Enforcement Administration (DEA) administrative law judge recommended that marijuana should be reclassified from Schedule I to Schedule II. A Schedule I substance has no known medical use, whereas a schedule II substance, like morphine, can be prescribed for limited purposes. In the ruling, which stemmed from a 16 year legal battle initiated by the National Organization for the Reform of Marijuana Laws (NORML), the judge called marijuana "one of the safest therapeutically active substances known to man," and wrote that "in strict medical terms, marijuana is far safer than many foods we commonly consume." Significantly, the judge also wrote that marijuana smoking was far more effective than use of synthetic THC pills in treating the nausea and vomiting associated with cancer chemotherapy. The recommendation will probably have no immediate effect since DEA Administrator John Lawn is expected to reject the judge's recommendation (13e).

A careful examination of the medical literature, particularly the 1982 report by the prestigious Institute of Medicine, indicates there is no convincing evidence that moderate marijuana use harms the immune system, (14) the reproductive system, or causes long term changes in brain chemistry (14a). Some recent evidence does suggest that heavy use of marijuana during pregnancy may result in reduced infant birthweight, but there is no firm evidence that marijuana use alone during pregnancy causes congenital anomalies in humans (15). Clearly, pregnant women should minimize drug use of any kind.

This summary is not intended to be a complete examination of all the medical evidence relevant to marijuana use. I will be more than happy, however, to provide specific references to Rep. Rangel or others who wish to become well acquainted with the substantial body of literature dealing with the effects of marijuana.

COCA, COCAINE, AND CRACK

It is crucial to distinguish between coca, cocaine and crack. The differences in toxicity and abuse potential of these different but related substances are extremely significant.

Coca, in the form of leaves or simple extracts of leaves, has far more in common with coffee than it does with granular cocaine (16). There is a long history of use of coca and coca-containing beverages without concurrent social problems. It is fair to say that the habit forming potential of coca is similar to that of coffee and tea (16a). Even daily use of what we would consider extraordinarily large quantities of leaves by South American Indians is not correlated with social disfunction or ill health (16b).

A recent article in the New York Times ('Drug Researchers Try to Treat A Nearly Unbreakable Habit') on the phenomenon of crack addiction drew a sharp distinction between crack, cocaine and coca. The euphoria induced by crack, and by intranasal use of cocaine, stems from the abnormal stimulation of a pleasure center in the base of the brain. However, the sense of euphoria depends not only on blood levels of cocaine, but on the rate at which blood levels rise. Hence the faster the increase the greater the euphoria. Dr. Herbert Kleber of Yale, an expert in the field, observed that the slow absorption of cocaine as occurs through the Indian habit of leaf chewing would create high blood levels but no euphoria. "It would have an effect like caffeine," Kleber wrote (17).

It would not be unreasonable to allow simple coca tea to be sold as tea is now sold in a supermarket. The effects and risks are comparable. Extracts containing more than a designated amount of leaves might be regulated like alcoholic beverages. It would also make sense to allow limited cultivation of coca for personal use.

In addition to the original Coca Cola, the rather colorful history of coca records use of a beverage called Vin Mariani's Coca Wine. It contained two ounces of fresh coca leaves to a pint of bordeaux (18). Testimonials for the wine were recorded from then president of the United States William McKinley, patriotic composer John Phillip Sousa, inventor Thomas Alva Edison, and Pope Leo XIII (19). (19a). Despite the widespread use of coca containing beverages, there is little evidence that social or medical problems ensued (19b).

The jump from coca to cocaine, and from cocaine to crack is a difference in kind, not merely in potency. Although crack is by far more addicting and dangerous than granular cocaine, the latter is highly addicting to a small but significant number of cocaine users. Accordingly, legal regulations must reflect the medical and social problems associated with use.

Crack poses unreasonable risks, and I find it extremely difficult to justify any degree of legalization. The question arises, then, of what to do with crack addicts who prefer smoking to any other route of administration. There is no easy answer, and researchers feel that addiction to the crack form of cocaine is the hardest to kick (20). It is worth considering the plausibility of providing a less dangerous form of cocaine to the crack addict. The availability of other forms of cocaine, and other legal drugs would, in my opinion, minimize a black market in crack even if that form of the drug remained illegal. It would not eliminate the crack problem, however. There are no panaceas, only hard choices.

Cocaine, although problematic, has a lower addiction potential than crack (21). I do not believe that making granular cocaine available to the public as a recreational drug would be wise policy. I suggest, however, that cocaine be made available to the public in the form of a chewing gum similar to that now used to treat nicotine addiction. The nicotine gum has proved quite effective, and there is no reason to doubt that a cocaine gum would be equally so (22). Some years back Weil suggested consideration of a coca chewing gum (22a).

In order to minimize the excessive use of the gum, and in order to send a signal that restraint must be exercised, a limited distribution system would be employed for this form of the drug. The gum would be available in packages of 20, each piece containing a small amount--1/20 to 1/10 of a gram--of pharmaceutical cocaine. It would be almost impossible to overdose from this form of the drug, and intake would be limited by the physical limitations inherent in mastication. To further regulate use, however, a MOST style rationing card would be used, limiting purchase to one package every 48 to 72 hours. If a purchase was attempted more frequently, the card would indicate that not enough time had elapsed. Undoubtedly, people would sometimes circumvent the system by having friends purchase gum for them. This would certainly be better than having someone become involved with a criminal subculture and granular cocaine or crack, however.

A pharmacist would do the actual dispensing. The card would simply be an electronic time log. Further compliance with the system could be ensured by requiring presentation of corroborating photo identification at time of purchase. The system would only monitor most recent purchase, and not invade privacy by keeping a long-term log.

The treatment of the addicted user, either of crack or granular cocaine, presents other problems. I would suggest that addicts be supplied with the cocaine gum under a clinical distribution system separate and apart from regular pharmacies. I would also allow physicians operating through the clinical distribution system to use other approaches as they deem fit. This could include judicious use of other forms of cocaine or treatment with other drugs, such as anti-depressants (23). I stress, however, that abstinence should not be forced on addicts who have not made the psychological leap of wanting to quit. Such efforts are doomed to failure. Administration of cocaine to addicts through a clinical system would undermine any remaining black market and keep the addict in touch with an environment where his addiction is treated as a medical problem and not a crime. I do not believe this would legitimize use of granular cocaine or crack, any more than use of methadone has legitimized heroin addiction (24).

Clearly, approaches to treatment of addicts presenting themselves to the clinical distribution centers would have to evolve as experience was gained. I emphasize that, as regards treatment of cocaine addiction, there are no easy answers, and suggest that those who feel stricter legal sanctions would be superior are not truly confronting the issue. To those who ask what would be done with someone behaving in a violent or anti-social manner under the influence of the drug, I respond that there are laws to deal with that behavior, and that individuals with underlying psychological problems must be dealt with as such.

The criteria, then, for the regulation of cocaine, are both medical and economic. I believe that money saved on incarceration and arrest procedures could be applied to distribution and treatment facilities. I believe that the economic incentive for a black market would be minimized by a system such as that described.

I believe that provision of coca and cocaine gum would not create serious social and medical problems and that use of the substances as described would be beneficial to many people in the same way that caffeine containing beverages are now.

A discussion of taxation and regulation will be included below.

OPIUM AND OPIATES

In addressing the problem of opiate use and addiction, a number of criteria are pertinent. These relate to medical effects and form in which an opiate is consumed.

In the hysteria over illicit drug use, a remarkable medical fact about opiates--all opiates, including heroin--has been overlooked. This is that opiate use and even addiction, isolated from problems caused by illegality and improper use of hypodermic needles, is medically quite innocuous. The primary medical problem attributable to long-term opiate addiction is chronic constipation (25), (25a). Even this effect can be mitigated through intelligent measures.

Once the medically innocuous nature of opiates is understood, it becomes clear that the most serious problems now associated with their use are caused by the circumstances surrounding their illegality (26), (26a).

Although legislators and others debating the issue of drug use and abuse in America may find it remarkable, it was widespread practice in the United States in the late nineteenth and early twentieth centuries for physicians to prescribe opiates as a substitute for alcohol use by alcoholics. The medical reasoning was and remains quite sound. It has been well documented in a study published in 1969 on Narcotics Addicts in Kentucky (27). The medical reasoning was that opiate addiction would arrest the cellular degeneration associated with alcoholism. The social rationale was that opiate addicts generally made far better citizens than alcohlics, being far less likely to engage in violent or anti-social behavior (28).

This is historical fact, not philosophy or personal opinion. Before explicating my regulatory suggestions, however, it is important to briefly discuss how drug policy has led to progressively more dangerous forms of opiate use.

There is no debate that opium and its derivatives are addicting. There is widespread evidence that such addiction is not incompatible with a productive existence, although the conventional wisdom denies this probability. In fact, the attempt to uniformly proscribe all opiate use, prohibiting opium equally with heroin, has led to the common form of opiate use we see today--intravenous heroin. In the illicit drug market, there is a premium on simplifying the smuggling process by increasing potency and thereby reducing bulk.

In the Consumers Union book 'Licit and Illicit Drugs,' there is an illustrative discussion of the effect of banning opium smoking in the United States between 1875 and 1914 (29). Opium smoking is something of a misnomer, since the traditional method actually involves inhalation of vapor. There is no inhalation of tars and other carcinogens such as occurs with smoking of tobacco or marijuana (30). In addition, the naturally occurring drug opium contains a relatively small amount of morphine and other psychoactive agents. The development of tolerance and addiction through opium smoking takes far longer than with other forms of opiate use. Intake is also far easier to stabilize, and far less likely to lead to acute overdose (31).

The effective banning of opium smoking was successful in causing people to adopt more hazardous forms of opiate use. Generally, the smokers first used legally available morphine, and, when later legislation made morphine unavailable, switched to heroin. Today, heroin is the universally available opiate (32). More recently, the pattern has been recreated in countries such as Iran and Pakistan, where pressure to limit the availability of opium has resulted in an explosion in heroin use, which was previously far less prevalent (32a).

Opium is addictive, and there is legitimate social interest in discouraging addiction. In view of the far more innocuous nature of opium in comparison to alcohol, heroin and other frequently used sedative and narcotic drugs, however, it would make sense to make a smokable and edible form of opium available through use of the MOST card system suggested for cocaine chewing gum. This would convey societal concern and encourage restraint. I would not suggest making it available as laudanum, as that preparation traditionally contained a substantial amount of alcohol in which the opium was dissolved. As with marijuana and coca, I would permit cultivation of the opium poppy for personal use, and allow limited purchase of the opium containing poppy heads (known as 'poppy straw') through the MOST card system.

The heroin addict should be provided with heroin or methadone and encouraged, but not forced, to abstain. Clearly, sterile syringes and pharmaceutically pure and measured drugs would have a salutary effect on most addicts. The use of a clinical distribution and treatment system such as that discussed for cocaine users would be implemented. Fortunately, the psychological problems inherent in cocaine addiction are not symptomatic of opiate addiction, and would therefore not present the same kind of problems.

In all cases, publicly available drugs would be taxed and revenues turned to administer and expand drug treatment and distribution centers and drug education programs. In those cases where there is interest in the legitimate medical and psychological applications of specific drugs, tax revenues could be applied to research on those applications. Some examples would be investigation of the use of cannabis in reducing chemotherapeutically induced nausea, or examination of the applications of hallucinogens in psychotherapeutic and creative situations.

In response to Rep. Rangel's question as to provision of drugs to addicts, I feel this should be based on ability to pay--an addict would never have to steal or sell drugs to pay for an addiction that is a medical problem.

PCP

PCP is a drug that appears to have tremendous potential for abuse with serious social consequences on both a long-term and short-term basis. Anecdotal evidence indicates that use can precipitate psychosis, bizarre behavior, and sometimes violence. PCP is the illicit drug version of our worst nightmares. It should remain illegal.

A lesson is suggested from the epidemic of PCP (and crack) use in some urban areas. It is that uniform proscription of both extremely dangerous and much less dangerous psychoactive drugs may lead to disregard of legitimate warnings about drug use, and muddle the distinction between more and less harmful illicit drugs and more and less harmful modes of administration. When marijuana is equated with PCP, the unfortunate end result appears to be a tendency to disregard the very real distinctions in the potential dangers of the two substances.

It is probable that a black market in PCP will remain. With law enforcement resources freed up from the pursuit of many other categories of drug offenders, however, it would be possible to focus on enforcement of PCP (and crack) prohibition. In addition, the economic incentive for a PCP black market would be greatly reduced if users knew they could obtain other substances cheaply and legally.

The drug should remain legal for use as a veterinary anesthetic.

HALLUCINOGENS

The term is used broadly here. In brief, I believe that these substances, including the naturally occurring plant hallucinogens such as psilocybin and peyote, as well as synthetics such as LSD and MDMA ('ecstasy'), should be regulated quite differently from all other drug categories (33).

Because these drugs have positive potential when properly used, but are dangerous to a very small percentage of psychologically unstable individuals, the legal provision of such drugs should be conditioned on demonstration of knowledge as to their effects (33a), (33b), (33c), (33d). This would involve completion of a written examination and an interview. Psychological screening would also be appropriate. Cultivation of psilocybin or hallucinogenic cacti for personal use would be permitted.

This category of drugs is not currently a source of much social discord in the United States or elsewhere. It is unfortunate, however, that sweeping prohibitions on legal use have driven them underground and gainsaid their use by individuals willing to undergo appropriate preparation.

What is worse, of course, is that the user of purported hallucinogens may be exposed to dangerous chemicals either deliberately or accidentally substituted for another drug. There is considerable evidence that this occurs repeatedly in the street sale of supposed psilocybin (33e).

Prior to the LSD hysteria of the late 1960's and early 1970's, research with great potential on the applications of that drug was being conducted by a large number of individuals. It is a tragedy of drug policy that the irresponsible behavior of a few prominent individuals led to the curtailment of potentially valuable medical and psychological research.

PRESCRIPTION DRUGS

The authority of physicians to prescribe drugs as they see fit should be restored. This does not mean that clear cut instances of excessive prescribing must be tolerated. It does mean, however, that a physician should be able to prescribe various psychoactive drugs based on his judgment and the needs of his patients. This should necessitate a doctor-patient relationship. It is not desirable, of course, to have physicians prescribing to patients they do not know.

This would allow physicians to once again treat alcoholism through opiate substitution and to undercut the growth of a black market in other kinds of prescription drugs. It would do away with the necessity for subterfuge on the part of both physician and patient, and put the patient into a context where he can openly ask his doctor about the way to limit any negative consequences of drug use.

2. The above responses address question two as to whether or not psychotropic drugs be made available to anyone who wants them or just individuals dependent on them. The answer, like any carefully considered response to a complex problem, is complex.

3. Drugs should not be made available to children. Age limitations could be either 18 or 21, depending on both the specific substance and the judgment of the individual 50 states.

One of the most important reasons to consider legalization is the effect it would have in eliminating the association between drugs and an underground, criminal subculture. Critics of legalization are probably correct in assuming that it would be impossible to keep drugs, whether legal or illegal, completely out of the hands of children.

As noted above, recent survey data indicate that although nearly 90 percent of high school seniors reported that marijuana has remained readily available between 1974 and 1983, daily use in 1983 had declined to virtually the same level as in 1974. Hence, availability does not appear to have been a significant factor in declining use (33f).

4. The response to Rep. Rangel's fourth query was elaborated in response to question one. To recap--a large part of tax revenues from drugs available to the public would be channeled towards drug distribution and treatment centers for addicts. Addicts would be provided drugs based on ability to pay. They would never be forced to resort to crime to support a habit. Tolerance has a ceiling and is not unlimited, as Rep. Rangel implies, although it is true that a small percentage of addicts may use enormous doses of drugs. It is the failure to stabilize drug habits that causes problems with tolerance, but there is no reason to think that in an orderly system such problems could not be minimized. The history of America in the nineteenth century indicates that many addicts not faced with an illegal lifestyle were able to stabilize their addiction and be socially productive members of society. In fact, a surprising number of eminent individuals were addicts, and there is evidence that addicted physicians are generally able to function effectively (34).

5. Parts of question five have been answered in my response to question one. The government would act as a regulator, not a provider of drugs. There is no reason that legitimate pharmaceutical companies should be denied the opportunity to make a reasonable profit from drugs. In the case of coca tea and beverages, other marketing entities besides pharmaceutical houses would undoubtedly be involved. Marijuana would be sold as a regulated commodity. Experience indicates that the market would find a reasonable price level once the costs of illegality were not a factor.

As noted above, drugs would be subject to taxation. A fair rate might be based on historical experience with alcohol, tobacco, coffee and tea. It is crucial, however, to keep the rate low enough so as not to create opportunities for a black market. Taxes must be economically viable.

6. The question as to precisely where and how drugs would be made available is not insignificant. Although a partial reply was included in my response to question one, further elaboration is necessary.

The response must be framed in terms of both providing drugs to the public and dealing with the specific problems of addicts.

Cocaine chewing gum and smoking and edible opium would be available through existing pharmaceutical outlets. It would be relatively easy for such outlets to acquire the equipment to monitor the MOST card system described.

Provision of other forms of cocaine or opiates to addicts would be through combination clinic and distribution centers similar to methadone programs now is existance. The current methadone clinics could actually be incorporated into the new system. As noted, physicians would be authorized to prescribe maintenance doses.

Coca containing beverages and coca tea would be treated as foodstuffs unless the preparation contained an extract of more than a designated amount of coca. They could be distributed as coffee, tea and colas are now distributed. The slightly more potent beverages, or coca wine, would be distributed through liquor stores or other places selling alcohol and regulated similarly.

Marijuana could be distributed through tobacconists or similar shops devoted exclusively to marijuana distribution. I do not favor sale of marijuana through liquor outlets as I think a distinction should be drawn between the two. While this may appear trivial to some, I believe that both the danger of additive effects when mixing alcohol and marijuana, and the fact that marijuana used alone is less dangerous than alcohol alone mandates maintaining a separation.

Due to the unique nature of hallucinogens and the necessity for the screening and testing process described above, it would make sense to establish dispensaries in which a user might also remain to ingest the substance if so desired. The dispensaries would also serve as the screening and testing centers for those wishing to legally obtain hallucinogens.

7. The question as to whether or not drug use, even if legal, be proscribed for employees in certain occupations is one of the most difficult and challenging issues in the debate on regulatory reform. Marijuana is of particular interest here, since traces may sometimes be identified for weeks following use. The difficulty is determining the meaning of such residuals.

There is one study suggesting that use of marijuana may cause impairment in piloting ability for up to 24 hours following use. Although there has not been replication of the study, the findings deserve scrutiny because they indicated some degree of impairment even when the pilots no longer perceived themselves as impaired (35).

The study has been criticized for inadequate methodology in structuring of controls. Clearly, the implications are significant, and suggest that caution must be exercised in making far ranging policy decisions pending replication (35a).

It is clear that the mere existence of traces of cannabinoids in the body days or weeks after use does not indicate impairment. It is my belief that individuals entrusted with the public safety must be unimpaired. This need must be balanced against the constitutional protection provided by the fourth amendment. All drug testing is intrusive, and the most effective testing, through blood sampling, is most intrusive.

Also problematic is the fallibility of even sophisticated testing techniques (36). While there is no resolution to the constitutional issues raised by testing, and there is currently no way to correlate traces of cannabinoids with impairment, there is a partial solution to the problem.

In lieu of random drug testing among operators of common carriers and public safety officials, random psycho-motor testing could be performed. This would directly measure the variables involved in safe operation of vehicles and equipment. Where there appeared to be impairment, blood samples might then be taken. This would avoid interference in personal behavior unless it directly impacted on the job performance.

Another technological device, the interlock, could be applied to operators of common carriers. Indeed, suggestions are being heard that such devices might be employed for first time DWI (driving while intoxicated) offenders to prevent them from operating their vehicles if impaired. While circumvention of systems could not be totally avoided, a combination of laws making it a felony to tamper with an interlock or for an individual to operate an interlock for an impaired person would serve as a deterrent to such tampering and circumvention of intent.

In the case of common carriers, it would represent an extremely modest additional expenditure to employ a safety technician responsible for monitoring interlocks to see that they were both in working order and had not been tampered with. The advantage of a combination of random psycho-motor testing and interlocks would be that all forms of impairment, including that caused by illness such as influenza or the common cold would be detected. In addition, the possibility of sophisticated drug or alcohol abusers circumventing accurate drug testing, which has already occurred, would become a non-issue. The public safety would be better addressed by this system, and the question of fourth amendment violations would be avoided.

I do not believe teachers, brokers and other individuals should be subjected to this regimen.

It is also important to remember that some forms of substance use do not cause impairment. No one, for example, believes that a pilot is a menace following his morning cup of coffee. The use of coca tea or beverages would have to be viewed in the same light.

8. In response to Rep. Rangel's question as to what rate of addiction and use might occur if drugs were legalized and what the accidental drug-related death rate might be, my response is that one must look to history both here and abroad for possible answers. Without going into statistical analysis, it is possible to note that reformed drug policy in Holland has resulted in decreased use of marijuana, despite its de facto legalization, and in decreased use of heroin (77). Use of other opiates and cocaine has risen, although crack use is virtually non-existent and medical and social indices of drug use have stabilized. The Dutch system is not similar to my proposals, however, and does not provide for as much regulation or any generation of revenues through taxation as do the proposals elaborated above.

Another clue as to the effects of legalization is available by looking at nineteenth century America prior to widespread drug prohibition. In brief, all the historical evidence indicates that despite widespread and fully legal supplies of marijuana, cocaine and opiate preparations, there were relatively few social problems associated with their use. There were medical problems and overdose deaths, but even these were minimized by the existence of orderly and pharmaceutically pure supplies of these substances. In many cases, people were unaware of what drugs various patent medicines and remedies contained and became addicted unwittingly. This was remedied by passage of the Pure Food and Drug Act of 1906, but drug prohibition and its concomitant social problems did not begin until 1914 with passage of the Harrison Narcotics Act (78).

An extremely important study, which, to my knowledge, has not been utilized in the current debate, was published in December 1987 in the American Journal of Public Health. Entitled "Epidemiology of Cirrhosis of the Liver: National Mortality Data," it provides compelling evidence that while the United States was experiencing a combination of public health benefits and social discord under prohibition, the British were able to gain all of the public health benefits without recourse to prohibition (78a). Not only, did the British exceed the Americans in reduction of cirrhosis of the liver linked to alcohol consumption, they also succeeded in keeping the rate at a relatively low plateau. This contrasts sharply with the American experience, where alcohol consumption rose towards pre-prohibition levels in the years following repeal, bringing with it a corresponding increase in cirrhosis.

This study is crucial in responding to legitimate concerns about the impact of liberalized narcotics laws on public health. The argument now heard in many quarters is that the tremendous health costs of legal alcohol provide grounds for dreading the effects of legalizing another substance. Nowhere do opponents stop to consider how effective the British combination of taxation, rationing, and restricted hours were in reducing alcohol abuse without creating black markets and social disruption. Surely those who invoke the public health success of prohibition must, in fairness, examine data that indicate there is an alternative to the polar extremes of complete prohibition or laissez faire legalization.

Another recently released study also provides grounds for optimism. The study, released in June 1989, is entitled "Liver Cirrhosis Mortality in the United States, 1971-1985 (78b)." The study indicates that across virtually every age group, (with the exception of over 75, where factors other than

alcohol use may significantly contribute to cirrhosis) cirrhosis of the liver peaked between 1973 and 1975. Per capita consumption of hard liquor peaked at about the same time, and beer consumption, a little later. While the reason for this encouraging development is not certain, a combination of education and the emphasis on health may have been important factors. It suggests that our culture may be able to develop a responsible relationship with psychoactive substances over time.

Depending on the assumptions used, it would be possible to paint either a grim or rosy scenario. I think it is important to remember that the mere fact of drug use is not necessarily an evil, and an increase in use would not necessarily be a hallmark of failure. The best analogy would be that use of alcohol could remain stable or increase but we would consider it progress if alcoholism and alcohol related traffic and other fatalities declined.

9. There is not unanimity of opinion among so-called medical and drug experts. It is not difficult to find individuals on both sides of the issue, although personally I have encountered individuals in a variety of medical and health related professions who now favor some form of drug legalization.

10. In the current climate it is difficult for anyone, physician or otherwise, to suggest that any drug use might be beneficial. It is relevant to recall, however, that although alcohol is the most damaging drug of abuse by many standards (tobacco causes more deaths, but less social tragedy) (39), there are studies indicating that moderate consumption of alcoholic beverages may be beneficial (39a), (39b), (39c), (39d). There are probably physicians who feel that the same thing is true for moderate consumption of some other substances. There are certainly mental health professionals who feel that use of hallucinogens and related drugs have potential benefits under the right circumstances (40), (40a), (40b), (40c), (40d).

The implicit suggestion of open communication with the family physician is a good idea, and there is little doubt that most physicians would suggest abstinence in most cases.

11. I believe it is difficult, if not impossible to project the impact of drug regulatory reform on either medical insurance or overall cost of health care. Perhaps as statistics accumulate, insurance companies would offer discounts for abstainers or moderate users as they do now for non-smokers.

Assuming the worst--that overall health care costs increased--there would be tremendous revenues available both from monies freed up from law enforcement and from funds produced through taxation of drugs. These funds would be earmarked for health care. Many solutions to complex problems involve trade offs (41).

12. I strongly believe that bringing the intravenous drug culture within the legal fold and providing free, sterile needles would greatly reduce the spread of AIDS. I feel that while the balance of the debate on drug regulatory reform unfolds, there should be immediate action to provide sterile needles to all intravenous drug users. It is encouraging to see New York City embarking on a pilot program in this regard (August 1988).

OTHER ISSUES

ADVERTISING AND PUBLIC USE

I believe that advertising, other than simple point of sale tombstones and similar ads in the yellow pages, should be prohibited. This regulation should apply equally to alcohol, tobacco and the other psychoactive agents, with the exception of coffee, tea, cola and mild cola beverages.

I believe public use should generally be prohibited and violation of this prohibition should be punishable by a fine similar to a parking ticket. Intravenous drug use and use of crack or PCP in public would be punishable by overnight incarceration similar to that usually employed for public drunkeness.

REGULATION OF PURITY AND CONTENT

The question of how and by whom psychoactive drugs, both in plant form and other forms would be regulated for purity and content is another issue that must be addressed. I suggest that we look to existing mechanisms with an eye to adapting them to regulation of the psychoactive drug market.

Currently, the United States Department of Agriculture (USDA) and the Bureau of Alcohol, Tobacco and Firearms (BATF) share responsibility for regulating aspects of the commerce in alcohol and tobacco.

Using these existing regulatory bodies, USDA could be responsible for grading marijuana for quality, presence of adulterants, and pesticide residues. BATF could function, as it does now for tobacco, to see that interstate commerce and tax regulations regarding the cannabis trade are complied with. The question of tar and tetrahydrocannabinol (THC) content in marijuana, if modeled on the tobacco industry, would not be problematic, as my suggestion is that marijuana not be made available in convenient, pre-packaged forms such as cigarettes. Currently, the Federal Trade Commission (FTC), which deals with all aspects of advertising, has a voluntary agreement with tobacco manufacturers regarding display of tar and nicotine content on some cigarette packages and advertisements.

Regulation of plant hallucinogens, such as hallucinogenic mushrooms, could also be handled by the USDA. In the case of some of these naturally occurring substances, the problem of spoilage would be a factor. USDA, however, has extensive experience dealing with perishables such as milk. It would seem unnecessary to create another bureaucracy strictly for regulating the quality of naturally occurring psychoactive agents.

Regulation of raw coca and opium would also be handled by USDA, although once the coca went into the marketplace, it would be regulated, like coffee or tea, by the Food and Drug Administration (FDA) as a foodstuff. You will recall that more concentrated coca extract would be regulated like alcohol, in which case purity and content would fall under the jurisdiction of BATF.

Prescription drugs would be regulated as they are today, by FDA. No change would be necessary.

Objections to this scenario have been raised in regard to the difficulty of having FDA involved for substances that could prove carcinogenic. This objection is not applicable in this scenario, however, since the plant substances would fall under USDA regulation.

ADDITIONAL BENEFITS OF REGULATORY REFORM

It has not been my intention here to cover all angles of the debate on legalization. Nadelmann has done a brilliant job in explaining the costs of prohibition and the potential benefits of legalization. Reuter has done a painstaking econometric analysis of why further expenditures for interdiction are unlikely to have any impact on retail price and availability of illicit narcotics. Therefore, I will only very briefly recap a few of the benefits I believe would result from reforming the narcotics laws.

In addition to the clear economic benefits that would accrue from savings on enforcement expenditures, reduced crime, and production of major tax revenues, there are a variety of economic and political benefits that would accrue from the drug regulatory reforms discussed herein.

First, in the international political arena, the United States would be able to purchase the bulk of the coca crop now being diverted to illicit cocaine production. This would provide economic benefits to the South American producing countries. There would be little incentive to continue illicit cocaine production since it would no longer be a particularly valuable commodity. Similar effects would occur in relationship to the international opium market. This would reduce, if not eliminate entirely, the corruption and violence now associated with the highly profitable black market.

Second, the U.S. currently produces a tremendous amount of high quality marijuana, and, according to the DEA, will probably be the largest producer of that substance by the 1990's. Therefore, the crop would be both a domestic boon to American farmers and a cash export crop that would redress, to some extent, our international trade imbalance. [2].

In addition, regulatory reform would overall reduce the tensions that have interfered with the effective conduct of American foreign policy recently. An unfortunate byproduct of current efforts at coca and other drug crop eradication has been the creation of virulent anti-Americanism in countries vital to our national interest.

The benefits would probably be greatest in those third world countries currently suffering political dislocation as a result of the illicit drug economy.

A FINAL WORD: POLITICAL REALITIES AND POLICY OPTIONS

It would have been easier to have simply eliminated some of my more controversial recommendations, such as the suggestion that a non-injectable form of opium and a cocaine chewing gum be made available through a rationing system. It would be much easier, for instance, to merely have suggested legalizing marijuana and looking at some pilot programs regarding other drugs. My intention, however, was to present a coherent approach to drug policy, and to allow those joining the debate to see that real options are both complex and plausible. To avoid recommendations dealing with the more controversial aspects of drug use and misuse would be to avoid meaningful debate.

Another reason for presenting a coherent system, a complete vision of one possible landscape after legalization, is to demonstrate that any move in the direction of a policy more oriented toward public health considerations than law enforcement prohibitions is not necessarily the first step on the road to laissez faire legalization. I want those examining, and even criticizing this scenario to have a view, not of what first steps might look like, but rather, what the end of the road could look like.

As noted in my introduction, no one can claim to have all the answers. The policy options are NOT, emphatically, a choice between perfect and imperfect policy, but, as in virtually all tough issues, choices between better and worse policies, or more, simply, the lesser of evils. As Royal observed, good ethics are practical ethics. It is my hope that even those most skeptical of the plausibility of the legalization approach will begin to see that it is possible to construct a scenario in which ethical, social, medical and legal criteria figure into the total equation.

There is an implicit assumption in the scenario which must now be made explicit. It is simply that there is a continuum of drug use, from that which causes no difficulties to that which interferes gravely with an individual's ability to function. It is truely a disaster to consider any drug policy options without understanding the centrality of this continuum. My recommendations are based on the belief that for some currently illicit drugs, use is so likely to quickly become abuse that these substances should remain proscribed. This posits a socially responsible role for law enforcement. Conversely, there are other substances which are far less likely to be used in a dangerous and disruptive manner.

My considerations include worst possible scenarios. Although the following examples are subjective interpretations, they are based on my knowledge of the medical and social consequences I believe most probable in relation to the use of specific psychoactive substances.

In a worst case situation, for example, a person is better off being addicted to marijuana than alcohol or opium. Opium addiction is still preferable to alcohol addiction. It may be a toss up between whether alcohol addiction or cocaine addiction is worse, but both are "better" than habitual use of PCP.

Another important distinction I have endeavored to draw is that it is not merely the drug, but the mode of administration of that drug, that can have a significant impact on abuse potential. Hence, the continuum from coca to crack is a central concept, not a trivial distinction. This is not mere opinion, for it is supported by both medical research and social observation.

The legal recommendations, of course, would not infringe on the right of the individual states to remain "dry" of marijuana or other drugs if they so chose. Even within states, different municipalities would undoubtedly work out statutes suitable to community standards.

Those who remain unconvinced can refer to the copious citations used to support my conclusions and recommendations. If I have simply made the reader pause and consider the evidence, I will feel that I have accomplished something of importance. It is difficult to break a mind-set, particularly on a subject so fraught with emotion. We are all wrestling with a social dilemma, and I believe it is the American genius to be able to find workable solutions to seemingly intractable problems. Only the drug barons stand to benefit from a continued extension of the status quo.

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Testimony of Paul Moore, September 29, 1988
THE SCOTT NEWMAN CENTER

~~Chairman Rangel, Committee members:~~

My name is Paul Moore. I am the Community Liaison for the Scott Newman Center. Since 1980, the Center has been dedicated to preventing drug abuse through education. Our efforts include media education and the development of prevention films, school curricula and books aimed at young people and their parents.

Our Center's headquarters is in Los Angeles, and as an Angeleno, I am intimately aware of how smog affects us. At its most benign it obscures a clear view of reality; at its worst it is unhealthful and may cause permanent damage to your health, even death.

The same can be said about the legalization of drugs.

The Center is unequivocally opposed to the legalizing of drugs. The more time we spend debating this polluted idea, the more currency we give it, the greater risk we run of permanently damaging our society. Why are we not spending this time in the more constructive task of developing sound prevention, treatment and rehabilitation policies?

The answer, of course, is that the topic of legalization is media-glamorous ~~and~~ makes for a facile, sensationalized discussion on talk shows, in op-ed pages and in newsmagazines. We as a society seem addicted to the hype of miracle solutions that look good but don't work.

In arguing for the legalization of drugs, proponents mistake effect for cause. In their simplistic world view, crime and official corruption here and abroad seem to have been invented by illegal drugs, and only the magic word--legalization--is needed for these problems to disappear. Do they think the American public just fell off the turnip truck?

Testimony of Paul Moore, September 29, 1988
THE SCOTT NEWMAN CENTER

Drugs, drug abuse and associated crime are the ugly, visible sores of deeply rooted problems in our society, nation, and world. They are the chickens of neglect coming home to roost. Drugs did not invent poverty, broken homes, gangs or unstable, profiteering foreign governments. Drugs did not invent greed, nor latchkey children, nor the human desire for a quick fix and easy out. Nor, for that matter, did drugs invent the general breakdown of moral and ethical values.

Without drugs, these problems remain. With legalized drugs, they become more insidious, more intractable, because society will have deemed one more poison legally acceptable.

There is a darker, underlying current in the arguments for legalization--that somehow, if only we would let the ghettoes and barrios have the drugs we assume they want, the druggies won't be breaking into the homes and apartments of the rest of us. We will have "sanitized" the problem. The facts are, of course, that drug use and abuse extend well beyond ghettoes and barrios to suburban living rooms and backyards.

Not only is such a thought immoral and irresponsible, it accepts real suffering from drug use and abuse as a "cost-effective" trade-off for an imagined decrease in crime. We at the Center do not believe in benign neglect.

The Center, already deeply concerned about media influences, is horrified at the possibility of sending a whole new set of mixed messages to our young people. Let's be honest with ourselves: drugs already have a glamorous and sexy image. If we legalize them, we won't be able to keep drugs--anymore than we have cigarettes and alcohol--out of the hands of our kids. Our national efforts in the past decade have resulted in a measurable effect on drug consumption and, more importantly, in attitudes towards drug use among youth.

Testimony of Paul Moore, September 29, 1988
THE SCOTT NEWMAN CENTER

With legalization, we throw away all that hard work in one moment.

Ultimately, whether we legalize drugs or not is a litmus test for our society and its values. Will we abdicate our responsibility to our children because the going got tough? ~~Let us~~ instead, get going.

We have an abiding confidence that we will use our common sense and dispose of this debate once and for all.

STATEMENT

of

MARVIN D. MILLER, ESQUIRE

On Behalf Of

NATIONAL ORGANIZATION FOR THE
REFORM OF MARIJUANA LAWS

Before The

HOUSE SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

29 September 1988

Miller

I. INTRODUCTION

Mr. Chairman and Members of the Committee:

I am Marvin D. Miller, a member of the Board of Directors of NORML and an attorney in private practice in Alexandria, Virginia.

I appreciate the opportunity which you have provided to the National Organization for the Reform of Marijuana Laws to assist you in coming to grips with the drug problem we all recognize as confronting our great Nation. NORML, as our name suggests, is a private, non-profit organization dedicated to reforming the marijuana laws.

We at NORML hope that these hearings signify a recognition that this is not a simple problem but a complex issue which does not lend itself to simplistic solutions. The approach to date has essentially been one of prohibition. We apply brute force through enormous law enforcement resources. This approach has failed. It is now time to take a fresh look at the situation, reexamine the facts, and take new initiatives.

II. PROHIBITION FAILED

A. Drug Availability Is Unchanged.

Despite the "War on Drugs" and the recent tripling of the resources committed to it, drugs are still as available as ever. During the 8 December 1987 hearings conducted by this Committee, the Honorable Chairman of this Committee asked Mr. Francis A. Keating, II, Assistant Secretary of the Treasury (Enforcement), Acting Chairman, Drug Law Enforcement Coordinating Group, National Drug Policy Board, the following question:

> "...I am just asking; as a result of all these efforts in the increase of expertise, technology, and efforts put into this area, are you suggesting that there might be one ounce less of heroin, opium, cocaine, or marijuana on the street as a result of that?
>
> Mr. Keating: No."[1]

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[1] Hearing, 8 December 1987, Select committee on Narcotics Abuse and Control, House of Representatives, p. 43.

Mr. Keating was correct. Availability is unchanged by current policy.

The State Department reported a 25% increase in foreign marijuana production during 1987 and the Drug Enforcement Administration estimated a 50% increase in domestic production, after eradication, during the years 1986 to 1987. Mark Dion from the Department of State in earlier Congressional testimony estimated that as much as nine thousand metric tons of marijuana were imported into the United States in 1986 alone.

There are indications that the government figures on the number of metric tons available in the United States, as high as they may seem, nonetheless, are underestimated. This is demonstrated by an observation of the President's Commission on Organized Crime (1986) which noted that in 1984, the Mexican police, in raids on only five farms, seized over two thousand metric tons of marijuana. This was eight times more marijuana than Mexican and American authorities had previously claimed was being produced annually throughout all of Mexico.

Wesley Pomeroy, founder of the Law Enforcement Assistance Administration and a former police chief said in a recent issue of the Drugs and Drug Abuse Education Newsletter what many in law enforcement will admit, if they can speak off the record, and that is that marijuana cannot be controlled. It is a weed that can be grown anywhere. One can grow it in her bathtub, in his flowerpot, their outside garden or anyplace else. The greatest amount of marijuana actually destroyed by eradication, as a practical matter, is that which is grown wild rather than that which is cultivated for consumption. Eradication will not stop the people from smoking marijuana.

At present marijuana is part of an unregulated, untaxed underground market. If allowed to surface, marijuana could be better controlled and at the same time, turned into an asset to be used against other more harmful substances.

B. Prohibition Fuels The Underground Economy.

Wharton Econometrics determined for the President's Commission on Organized Crime in 1986 that one-half of organized

crime's revenues were derived from illegal drugs. Prohibition has created an enormous underground economy which is totally untaxed and unregulated. Large sums float around the economy but do not contribute to it. These sums are not available for use in drug education and treatment. Taxation and regulated availability of marijuana would allow us to educate and treat those with hard drug problems.

It is estimated that the domestic marijuana crop is the largest cash crop, overall, in the United States. It has an estimated value of thirty three billion dollars. Revenue from this large cash crop could be used to improve our economy. The tax revenues could fund treatment and education for those addicted to hard drugs.

It is clear that the unintended beneficiaries of our current drug prohibition include those whose profits have increased because prohibition causes higher prices. In the 1980's, like in the 1920's, Prohibition and the application of increased penalties increases the risk which, in turn, increases

the price and the profit. Since the actual costs of production remains about the same the profit margin increases.

Interestingly, Prohibition's inclusion of drugs such as marijuana with hard drugs such as crack/cocaine and heroin, has also contributed significantly to the prevalence of hard drugs in our underground markets and in our society. One can obviously smuggle a smaller amount of cocaine at a significantly greater value with less chance of detection than it would take to smuggle a larger amount of marijuana of comparable value. Smaller is easier. Drug Enforcement Administration reports indicate that the costs of bulk cocaine in Florida has gone down dramatically while the cost per unit on the street has remained the same. An obvious effect of this is to increase the margin of profit. It is also demonstrative of the increased volume. The underground market has an interest in turning people toward more harmful drugs since they are easier to handle and produce easier profits. Lumping marijuana with hard drugs is counterproductive and makes this underground market more harmful to our society.

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This highly profitable underground market is not going to be eliminated by brute force. Massive police sweeps, as demonstrated in the District of Columbia and elsewhere, may disrupt the underground market place or cause it to move to a different location, but they do not eliminate it. A young person from an urban ghetto who has no hope of a real future often would rather stand on the street corner and make a thousand dollars a day selling crack/cocaine than work harder and longer hours for the minimum wage in a fast food restaurant. Profits fuel this illegal drug system and prohibition drives up prices and increases profits.

This blackmarket economy has so much money that it's vast temptations extend beyond the urban poor and reach out to law enforcement. There now appears to be, on the average, more than one hundred cases of drug related police corruption prosecuted every year. Officers have been known to rob drug dealers of cash because they cannot complain. Some even rob drug

dealers of drugs which they later resell because they know that there is no place for the victims to go.

There are even some experts who believe that the proliferation of crack/cocaine in our urban areas is related to the increased profits which are the natural corollary to increased prohibition efforts. Crack is a drug dealing MBA's ideal. It is easier to move around than something bulky like marijuana and the profit margin is greater. It is also cheaper to produce. It can be sold at a relatively low cost while still making a large profit and it, unlike marijuana, creates an addictive customer. It is a marketing idea generated by prohibition. It expands the illegal market and the illegal financial empire of the underground drug economy. Why take the same risk for marijuana as for cocaine when there is more money in cocaine? Prohibition makes cocaine more attractive to market forces than marijuana.

C. The Cure Is Worse Than The Disease.

Many more problems are caused by prohibition than it cures. The increased homicide rate in cities such as our Nation's Capitol are directly related to the enormous profits to be made by trafficking in the prohibited substances. They are the result of turf wars between people seeking to cash in on this lucrative market. This illegal, uncontrolled market also strives to aggressively advertise its product and spread its tentacles. As soon as one person is arrested, another steps up to take his or her place and grab for the money ring.

Because this underground marketplace is unregulated and uncontrolled there is no quality control. People die of overdoses on hard drugs because the product is too impure or too strong and they are unaware of it. Harmful fertilizers and pesticides such as paraquat may be used and the unaware consumer suffers the health consequences.

Other adverse health consequences caused by this underground market which prohibition has created include the fact that 50% of all AID's victims, whether homosexual or

heterosexual, contract the disease through the intravenous use of illegal drugs. In March 1988, the President's Commission on AID's recommended that one solution towards the AID's epidemic would be to provide drug treatment programs for all those who need it. Under our current policies, the greatest emphasis is on arrest and prosecution. There are insufficient resources available to provide treatment.

Marijuana arrests for simple possession comprise the greatest bulk of all drug arrests. The funds spent on marijuana prohibition should be diverted to help the tens of thousands of people who would like to obtain treatment for hard drug problems but have no place to go. Making marijuana available through taxed, regulated control would release a lot of resources that could be put to better use. Rather than criminalize productive citizens who occasionally smoke marijuana, we should allocate these resources to treating and educating those with hard drug problems.

D. Too Little for Too Much.

The cost in human lives and money occasioned by the current prohibition policy, in many respects, is far more harmful and deleterious to the Country than are the controlled substances themselves.

In the past several years, the federal enforcement budget has gone up approximately three billion dollars; yet, as Mr. Keating noted, not one ounce less is kept off the streets. We now spend approximately ten billion dollars a year on drug prohibition nationwide. Our efforts are ineffectual and misguided. Throwing money and brute force at the problem is not the answer. It is simple and easily saleable but it does not work.

The largest portion of our budget is wasted. Well over 75% of all drug arrests are for simple possession. Of these arrests, the vast majority, by far, are for marijuana. Indeed, marijuana arrests comprise about 40% of the total of all drug

arrests nationally.[2] Simple marijuana possession accounts for 93% of these arrests.[3] With marijuana possession cases accounting for the bulk of all state and federal drug arrests in this Country, we are wasting significant resources that could be allotted to treatment and education for hard drugs.

It seems counterproductive to spend billions of dollars and tie up the vast majority of our time and effort going after marijuana possession when tens of thousands who are heroin and cocaine/crack addicts are left in the criminal milieu, unable to get treatment for their problems. It is not sensible to devote so much of our enforcement budget to suppression of a relatively benign substance such as marijuana which has no toxic dosage while letting those addicted to such severely debilitating drugs as crack/cocaine and heroin go untreated for a lack of resources.

Given the fact that we have a ten billion dollar

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[2] Uniform Crime Reports of 1987 by the Federal Bureau of Investigation at page 163 and 164.

[3] Uniform Crime Report of 1987 by the Federal Bureau of Investigation at page 163 and 164.

national budget for state and federal efforts and that 40% of all drug arrests relate to marijuana, removing marijuana from this prohibition effort would free enormous resources for more practical application.

In California, for example, a 1987 analysis of the fiscal savings attributed to the decriminalization of possession of an ounce or less of marijuana indicated that the total savings for the period of 1976 through 1985 was close to one billion dollars.[4] This policy generated additional revenue income in the neighborhood of four million dollars.

Alaska has allowed marijuana to be available for personal use for thirteen (13) years with no deleterious consequences and at great savings. Indeed, they are better off than many other states because they are not fueling an underground market, nor are they criminalizing their citizens for a lifestyle choice. That State does not have the rampant

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[4] Report entitled Fiscal Savings In California Law Enforcement, 1876-1985, Copyright 1987, Medi-Comp Press.

increase in drug problems that many incorrectly claim happens when marijuana is made available.

In Texas, by comparison, they still prosecute all levels of marijuana possession. The lack of benefit compared to the enormous costs involved has given cause to some legislators to consider changing the law. In a report prepared for Texas State Senator Craig Washington, it was estimated that the actual amount of revenue expended per year to punish those who possess minor amounts of marijuana might be as high as fifty million dollars annually. That large amount resulted in punishing only 1% of the user population. The cost of the prohibition policy and punishment was considerable. Not only were taxpayer funds expended to little effect, but a lot of damage was done to the private lives of otherwise law abiding citizens. Many ordinary people from all walks of life were arrested and jailed on marijuana charges. They would not be criminals by any definition of the term other than by their act of possessing small amounts of marijuana. These people are being punished but there is

little noticeable effect on the marijuana situation in Texas. The only thing disrupted is to these individual lives. It costs millions of dollars to the Texas taxpayers while having a nil effect on marijuana use.

This Texas report estimated that in the United States, as a whole, 1 in 10 people might possess small amounts of marijuana for personal use with as many as 1 in 4 having experimented with it or perhaps using it occasionally. That left approximately one and a half million Texans who regularly violated the law and over three and one half million who have or occasionally violate the law. Cost benefit analysis indicted that there was, as has been shown in California, a misapplication of resources in the marijuana prohibition laws.

Applying the lessons to be learned from the Alaska, California, and Texas situations to the national marijuana prohibition policy teaches us that the current policy of marijuana prohibition is counterproductive to the overall policy of addressing our national drug problems. We spend ten billion

dollars annually from the coffers of the states and federal government on drug prohibition. We expend the largest portion of these resources on the simple possession of one single drug which is the most benign of them all, i.e., marijuana. We criminalize approximately one-third of our population, the fifty million marijuana users, because they smoke marijuana while ignoring the treatment needs of tens of thousand of people who want help for their hard drug problems. Treating all drugs the same is not cost effective. We are wasting our resources. In 1982, the National Academy of Sciences recognized after five (5) years of study that regulated availability of marijuana ought to be allowed on a state-by-state basis. It is a matter of state's rights, not federal action. Our current policy ignores the plain fact that not all drugs are the same.

III. NOT ALL DRUGS ARE THE SAME.

Lumping marijuana with crack/cocaine, heroin and other more severe substances is as impractical as it is inaccurate. Marijuana is not addictive, is not a gateway drug, does not lead

to violence, and does not exact the costs to our society as do such other drugs such as alcohol and tobacco.

Nearly all drugs and medications have toxic and potentially lethal dosages but this is not true for marijuana. There are no documented marijuana user fatalities. As a Drug Enforcement Administrative Law Judge recently found, the consumption of ten raw potatoes can cause a toxic effect on an individual but it is not physically possible to eat enough marijuana to induce a toxic reaction. One would have to smoke 1,500 pounds in 15 minutes for a toxic overdose. There is no credible medical evidence that marijuana has caused a single death. Contrast this to aspirin which causes hundreds of deaths every year by overdose.[5]

Each year alcohol abuse costs this nation about one hundred billion dollars and contributes directly to between eighty and one hundred thousand (80-100,000) deaths and

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[5] In Re Marijuana Scheduling Petition, Docket No. 86-22.

indirectly to another one hundred thousand (100,000) deaths.[6] According to the Surgeon General of the United States, there are approximately three hundred thousand (300,000) tobacco related deaths each year. The 1988 Surgeon General's report also listed tobacco as a more harmful drug than marijuana. It and not marijuana is the gateway drug.

Insofar as drug induced violence is concerned, 54% of all violent criminals serving prison sentences report that they consumed alcohol shortly before their violent crime. Marijuana is known to be a drug which induces serenity rather than violence. It is not known to create psychotic violent behavior like PCP and does not induce criminal activity as do other drugs.

The Surgeon General in his recent report in March of 1988 recognized that marijuana is not a major gateway drug into other substances. The biggest gateway drug is tobacco.

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[6] Research Triangle Institute Report, June 1984 and The Public Interest Magazine, Summer 1988 at page 24.

Marijuana users do not go about committing other crimes to support their recreational use. The fifty million Americans who use marijuana are generally productive members of our society. Their only criminal association occurs because marijuana is a prohibited substance and its possession is a crime. They are forced to have contact with and fuel the underground market in order to obtain marijuana for their personal use.

They should not be cast out of society because they prefer marijuana to scotch, gin or bourbon. They are educated, skilled and dedicated men and women. They are people from all walks of life who have used marijuana and are none the worse for wear because of it. Making these fifty million citizens criminals does more harm than good.

IV. REMOVING MARIJUANA FROM CURRENT DRUG PROHIBITION WOULD HELP SOLVE THE NATION'S DRUG PROBLEMS.

Marijuana is the most widely used of all drugs currently prohibited. It is the one which has the least

potential for abuse. It has less toxic potential than alcohol or tobacco. It is not a gateway drug such as tobacco. Alcohol and tobacco combined contribute to five hundred thousand deaths each year in the United States. This is not true for marijuana. Alcohol contributes significantly to 54% of all violent crimes in the United States. This is not true for marijuana. Alcohol costs the country one hundred billion dollars in economic losses each year. This is not true for marijuana.

Prohibition of marijuana does, however, criminalize tens of millions of law abiding Americans who, except for their occasional use of marijuana, would not otherwise be the least bit involved in the criminal law system.

Removing marijuana from the current prohibition scheme and making it available through taxed, regulated access would also deprive the blackmarket economy of an enormous economic resource which it currently uses to fuel other criminal activity. It is estimated, for example, that organized crime derives one-half of its resources from drug profits. While marijuana is the

most, shall we say, entrepreneurial drug in the underground economy, the income derived from its sale nonetheless fuels a large unregulated and untaxed blackmarket.

Crop value estimates place the domestic crop grown in the United States at a value of nearly ten billion dollars.[7] It is believed by some to be the largest single cash crop in our country. Given the underground nature of the market, these are conservative estimations.

Taxed and regulated availability would not only liberate billions of dollars in law enforcement resources and allow them to be diverted towards education and training for drugs that present a greater problem to our society, but this policy change would also generate revenues in the neighborhood of ten billion dollars per year. It would no longer be necessary for tens of thousands of drug addicts to be compelled to remain in the criminal milieu because there is no treatment facility

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[7] The D.E.A. estimates in the 1987 NNICC Report that 7.7 million pounds are grown in the United States annually. They also quote prices at about $1,000.00 per pound.

available for them. It would make it possible for the government to begin to use the most proven and reliable means known for changing societal behavior, i.e., education.

The regulated, taxed availability of marijuana would allow billions of dollars that are now channeled through law enforcement and the backways of illegal blackmarkets to be used to educate and treat those with hard drug problems. The criminal law systems' resources could then be devoted to those areas which have a greater, direct and more deleterious impact on society.

This would not be a surrender to the dealers. It is a means to take them out of the blackmarket. It is not an endorsement of use but recognizes that it is a matter of choice. When we tell young people about the harm of drugs, if we honestly admit that marijuana is not as harmful as other substances, something they already know, then they will more likely listen to and believe us when we warn them about other drugs. If you tell young people lies about one thing, they will likely not believe you about anything else. To lump marijuana

with hard drugs and treat all of them the same is to not tell the truth.

Regulated, taxed availability would reduce overall drug use. In 1979, the Dutch government made marijuana possession and minor distribution no longer a crime. As a result of their practical approach to the drug problem, the number of new users decreased and general use steadily declined.[8] The number of heroin addicts stabilized and has not increased. The number of heroin addicts is slowly decreasing. It appears as though individuals, when faced with the option of having marijuana available legally, do not go to the use of illegal hard drugs.

The distinction the Dutch government has successfully drawn between hard and soft drugs has not only led to an overall reduction in the use of all drugs, reduced the rate of increase in the use of both hard and soft drugs, but has also stabilized

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[8] Drugs and Drug Abuse Education Newsletter, June 1988, Vol. 19, No. 6, at page 52.

the crime rate. Most drugs are consumed in Amsterdam; yet, in 1987 its overall crime rate was reduced between 8% and 10%.

The sensible Dutch policy recognizes that criminalization and demand creates a supply of high price, high profit and unregulated quality which leads to deleterious effects. By allowing controlled, regulated availability, the high profit incentives were removed and the allure of the harder drugs was reduced. Attraction for harder drugs decreased.

Even in the United States, the elimination of marijuana from prohibition has contributed to a net reduction in marijuana use. Eleven (11) states encompassing one-third (1/3) of our total population have taken this course in the last ten (10) years. The resultant reduction in marijuana use in these states have been impressive

Never in history has a society been able to totally eliminate and totally prohibit the consumption and use of and consciousness altering substances. Profit always insures that someone will be in the illegal trade and that when one person is

removed, someone new will come in to take their place. Blackmarket profits lead to marketing, competition, violence and corruption. Legal availability separates the soft user from the hard user, removes profit as a driving force behind the market, and brings the underground to light thereby placing it under greater control.

It is clear that we will not stamp out drugs by the application of brute force. We must recognize that all drugs are not the same and we must act accordingly. We should not be criminalizing tens of millions of our citizens because they prefer to use marijuana.

The issue of the use of psychoactive drugs as a moral issue is a red herring. Everyone alters their consciousness. Some do it through alcohol, others through caffeine or nicotine while some use through fiction novels and fantasy movies. Others alter their consciousness through meditation and by the comfort of religion. People should be allowed to choose their own means of altering their consciousness in the privacy of their own home

without interfering with others or being subjected to interference from their government. Altering ones state of consciousness is a right we all practice. Let us not punish the millions who sit at home and choose a different path.

Marijuana is a mild consciousness altering substance that is nonaddictive and relatively or comparatively nondeleterious when compared to alcohol and tobacco. Its regulated availability ought to be allowed.

Americans respond to honesty and education. Let us be honest and remove marijuana from its current prohibition. Let us not lump it together with other more harmful substances. It is different. Let us admit this truth. It is less harmful. Let us say so. Let us use the funds that we can save from this failed marijuana policy to educate and treat those who need it.

Education has led to an overall reduction in the consumption of tobacco, hard liquor, red meats and fatty foods. Americans are becoming healthy, not because it is a crime to be unhealthy, but because education is telling them it is the right

thing to do. Let us take our dollars out of criminalizing tens of millions of our people for a choice of lifestyle and put that money into education so that the people can learn the truth about such substances as crack, heroin and PCP. Let those who wish it, have treatment available. Let us give them someplace to turn other than a jail cell.

We can achieve all of this by making marijuana available in a controlled and regulated system. Let us be reasonable.

cate the taxes which Alaska has levied on Alyeska's receipts, we conclude that the challenged tax did not violate the "internal consistency" test of the commerce clause.

(c) *The Due Process Clause Does Not Prevent Alaska From Taxing Alyeska's Gross Receipts.*

In *Sjong* we discussed the subject of commerce clause and due process infirmities in state taxation. There we said in part:

> [C]ourts ... have usually placed considerations of minimum contacts and sufficient nexus under the due process heading, while questions regarding the proper apportionment of income to the taxing state and the discriminatory impact of taxes are covered by the Commerce Clause.

622 P.2d at 973 (citations omitted).

[10] Alyeska does not develop its due process argument independently of its commerce clause argument, making only passing reference to the due process clause in its reply brief. We hold that Alyeska, in light of the protection, opportunities, and benefits Alaska provided it, has no basis for a due process challenge to the tax, under the test of "minimum contacts" outlined in *Sjong:*

> In determining what constitutes sufficient minimum contacts for the purposes of taxation, the Supreme Court has adopted the following basic test first stated in *Wisconsin v. J.C. Penney Co.*, 311 U.S. 435, 61 S.Ct. 246, 85 L.Ed. 267 (1940): "That test is ... whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state. *The simple but controlling question is whether the state has given anything for which it can ask return.*" 311 U.S. at 444, 61 S.Ct. at 250, 85 L.Ed. at 270–71 (emphasis added). As we stated in *North Slope Borough v. Puget Sound Tug & Barge*, 598 P.2d 924, 928 (Alaska 1979):
>
> > Due process requires that a tax be related "to opportunities, benefits, or protection conferred or afforded" by the taxing authority and such a relationship exists "if the tax is fairly apportioned to the commerce [there] carried on." *Ott v. Mississippi Valley Barge Line Co.*, 336 U.S. 169, 174 [69 S.Ct. 432, 434], 93 L.Ed. 585, 589 (1949).

Id. at 970. There is thus no merit in Alyeska's due process argument.

AFFIRMED.

Hugh HARRISON, Appellant,

v.

STATE of Alaska, Appellee.

No. 7407.

Court of Appeals of Alaska.

Aug. 31, 1984.

Defendant was convicted in the Superior Court, Fourth Judicial District, Fairbanks, James R. Blair, J., of importing alcohol into village which chose to prohibit both sale and importation of alcoholic beverages under local option law, and he appealed. The Court of Appeals, Bryner, C.J., held that: (1) local option law does not violate equal protection and due process clauses of Federal or State Constitution or privacy clause of State Constitution, and (2) conviction was not barred on ex post facto grounds by reason that federal approval of local option law was pending at time of defendant's offense.

Affirmed.

1. Constitutional Law ⇐239(1)
Intoxicating Liquors ⇐14

Local option law does not constitute impermissible racial classification, since it

permits any municipal government or established village to enact prohibition against sale or importation of alcoholic beverages, which prohibition, once enacted, applies to all persons in municipality or village, regardless of race. Const. Art. 1, §§ 1, 7; U.S.C.A. Const.Amends. 5, 14.

2. Constitutional Law ⇐82(7)

Consumption of alcoholic beverages in home, while not fundamental right, touches on privacy interest that is manifested in terms of interest more squarely within personal autonomy, and thus, even when state seeks to regulate consumption indirectly, through restrictions on importation, state bears heavy burden of justifying regulation as legitimate health and welfare measure. Const. Art. 1, § 22.

3. Constitutional Law ⇐81
Intoxicating Liquors ⇐14

Evidence which established correlation between alcohol consumption and poor health, death, family violence, child abuse, and crime, established State's burden of justifying local option law, which permitted villages and municipalities to vote to prohibit sale and importation of alcoholic beverages, as health and welfare measure having sufficiently close and substantial relationship with legislative purpose of curbing problem of alcohol abuse in which State had compelling interest, despite evidence that moderate use of alcoholic beverages may be beneficial. Const. Art. 1, § 22; AS 04.11.496(b).

4. Constitutional Law ⇐82(7)

Consumption of alcoholic beverages is not protected privacy right under Federal Constitution.

5. Constitutional Law ⇐211(3)

Equal protection does not require perfect equality and uniformity in application of regulatory scheme. U.S.C.A. Const. Amend. 14; Const. Art. 1, § 1.

6. Constitutional Law ⇐239(1)
Intoxicating Liquors ⇐14

Local option law, which permits villages and municipalities to prohibit importation and sale of alcoholic beverages, does not violate equal protection simply because moderate consumers may not have access to alcoholic beverages in community which has enacted such law or because it gives individual communities discretion to determine level of alcohol availability which will be permitted within their boundaries; differences in treatment of citizens from different communities resulting from extent to which individual communities elect to implement law are not constitutionally significant, and similarly situated persons are treated alike. AS 04.11.496(b); Const. Art. 1, § 1; U.S.C.A. Const.Amend. 14.

7. Constitutional Law ⇐211(2)

Every citizen of state need not be treated exactly alike, regardless of geographical location and other similar considerations, for purpose of equal protection; rather, question is whether differences in treatment are reasonable in light of balance between importance of legislative intent, on one hand, and interest of individual, on other. AS 04.11.496(b); Const. Art. 1, § 1; U.S.C.A. Const.Amend. 14.

8. Constitutional Law ⇐209

When state attacks complex problem, it need not choose between attacking every aspect of that problem and doing nothing at all to survive equal protection challenge. AS 04.11.496(b); Const. Art. 1, § 1; U.S.C.A. Const.Amend. 14.

9. Constitutional Law ⇐211(2)

Classifications need not be perfect to survive equal protection challenge. AS 04.11.496(b); Const. Art. 1, § 1; U.S.C.A. Const.Amend. 14.

10. Constitutional Law ⇐250.1(2)
Intoxicating Liquors ⇐19

Felony classification rather than misdemeanor based on quantity and type of alcoholic beverage imported into village which has voted to prohibit it does not violate equal protection; classification is not irrational, as potential for harm increases with amount of alcohol consumed. AS 04.11.496(b), 04.16.200(e); Const. Art. 1, § 1; U.S.C.A. Const.Amends. 5, 14.

11. Constitutional Law ⇐258(2)
Intoxicating Liquors ⇐19

Statutory distinction between misdemeanant and felon based on type and quantity of alcoholic beverages imported into village which voted to prohibit it did not deny defendant due process, as distinction does not create irrebuttable presumption that larger quantities of alcoholic beverages are imported for sale rather than personal use, but, rather, statute is silent on issue of intent, simply sanctioning importation. AS 04.11.496(b); U.S.C.A. Const.Amends. 5, 14; Const. Art. 1, § 7.

12. Constitutional Law ⇐258(3)
Intoxicating Liquors ⇐14

Local option law does not deny due process by denying defense of lack of profit to persons charged with importation, as defense is unavailable in felony prosecution for either sale or importation, with result that all persons charged with felonies are treated alike, and thus, fairly. AS 04.11.496(b); Const. Art. 1, § 7; U.S.C.A. Const. Amends. 5, 14.

13. Intoxicating Liquors ⇐176

No person charged with felony under any section of statute which classifies criminal levels for sale and importation of alcoholic beverages can properly assert defense of lack of profit, which was meant to be available in cases of casual distribution which occurred as incident of lawful possession, where distributor did not unlawfully import alcoholic beverages in his or her possession. AS 04.16.200(e).

14. Intoxicating Liquors ⇐14

Defendant, who was charged with felony importation of alcoholic beverages into village which had voted to prohibit it, had no standing to challenge misdemeanor provisions of local option law. AS 04.11.496, 04.16.200, 04.16.200(a), (b)(3), (c, e), (e)(1, 2).

15. Intoxicating Liquors ⇐24

Local option law was enacted to regulate importation of alcoholic beverages, not to regulate simple possession. AS 04.11.496(b).

16. Constitutional Law ⇐200

Defendant's conviction of importing alcohol into village which voted to prohibit both importation and sale of alcoholic beverages did not violate constitutional prohibition against ex post facto laws by reason that federal approval of local option election was pending at time of his offense, as purpose of federal approval of preventing discriminatory electoral practices was not implicated and approval was ultimately obtained, with result that prohibition was in effect at time that defendant committed offense. U.S.C.A. Const. Art. 1, § 9, cl. 3; Const. Art. 1, § 15; Voting Rights Act of 1965, § 5, 42 U.S.C.A. § 1973c.

17. Elections ⇐12(8)

Failure to obtain federal preclearance of state election law does not automatically invalidate election results, at least where clearance is ultimately granted; rather, where state fails to obtain required preclearance, election results are subject to invalidation, but substantive violation must be shown which could result in denial of preclearance and mere technical violations of procedural requirements for preclearance are insufficient basis for invalidation. Const. Art. 1, § 15; Voting Rights Act of 1965, § 5, 42 U.S.C.A. § 1973c.

18. Elections ⇐12(1)

Voting Rights Act of 1965 was enacted to prevent discriminatory practices that exclude minorities from electoral process. Voting Rights Act of 1965, § 5, 42 U.S.C.A. § 1973c.

19. Intoxicating Liquors ⇐241

In prosecution for importing alcohol into village which voted to prohibit it, in which defendant did not allege that he detrimentally relied on good-faith belief that village's election had not obtained federal preclearance and vote was thus potentially invalid, but admitted rather that he was fully aware of illegality of his actions, defendant could not claim on appeal that he was deprived of adequate notice that his conduct was criminal by reason that preclearance for election had not been ob-

tained at time of his offense. U.S.C.A. Const.Amends. 5, 14; AS 04.11.496(b).

Randall Simpson and Gary C. Sleeper, Jermain, Dunnagan & Owens, Anchorage, for appellant.

Peter A. Michalski, Asst. Atty. Gen., Anchorage, and Norman C. Gorsuch, Atty. Gen., Juneau, for appellee.

Before BRYNER, C.J., and COATS and SINGLETON, JJ.

OPINION

BRYNER, Chief Judge.

Following a jury trial, Hugh Harrison was convicted of importing alcohol into the village of St. Mary's in violation of AS 04.11.496(b). On appeal, Harrison challenges the constitutionality of Alaska's local option law, arguing that it violates the equal protection and due process clauses of the United States and Alaska Constitutions and the privacy clause of the Alaska Constitution. Harrison also challenges his conviction on *ex post facto* grounds. After reviewing Harrison's claims, we conclude that his conviction must be affirmed.

In order to place Harrison's arguments in context, it is helpful to review the background of Alaska's local option law. Alcohol abuse has been and continues to be a problem in Alaska. A comprehensive study of this issue was released in 1977 by the Analysis of Alcohol Problems Project. Several of the study's conclusions illustrated the extent of alcohol problems in Alaska. For example, Alaska's rate of death due directly to alcoholism increased 153% from 1959 to 1975, and Alaska's alcoholism mortality rate in 1975 was 418% higher than the national average. Analysis of Alcohol Problems Project, *Working Papers: Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975*, vol. V at 14 (1977). From 1958 to 1975, Alaska's rate of annual consumption increased at almost twice the rate of the national average. *Id.* at 42. The total economic cost of alcoholism and alcohol abuse to Alaska in 1975 was reported to be 131.2 million dollars. *Id.* at 32. The study noted that the impact of alcohol-related problems was greater in rural areas. *Id.* at 4.

In 1976, the Governor's Commission on the Administration of Justice concluded that crime in Alaska is significantly related to the excessive and unregulated consumption of alcohol. Governor's Commission on the Administration of Justice, *Standards and Goals for Criminal Justice* at 41 (1976). The Commission noted that, according to the National Council on Alcoholism, one out of every ten Alaskans is an alcoholic. *Id.* The Commission recommended that rural villages be allowed to control alcoholic beverages. *Id.* at 14.

In 1980, the Alaska Judicial Council published a report entitled *Alaska Felony Sentences: 1976–1979*. The report found a significant relationship between the use of alcohol and criminal behavior. This association was most significant in rural areas of the state where, according to the Council, 77.9% of violent crimes and 55.6% of property crimes were committed under the influence of alcohol. Alaska Judicial Council, *Alaska Felony Sentences: 1976–1979* at 45–48, 65–67 (1980).[1]

In response to the growing evidence of a strong relationship between alcohol abuse and crime, Alaska's local option law was enacted in 1980. Under the law, any municipal government that desires to regulate the importation or distribution of alcoholic beverages can conduct a referendum election. A community choosing to hold a ref-

1. In 1981, the House Task Force on Violent Crime was established to examine the causes of violent crime. The Task Force began by holding public hearings throughout the state; it reported:

> Another dominant theme in the testimony was the relationship between violent crime and alcohol abuse. Police, prosecutors, judges, community leaders and victims testified that alcohol abuse and violent crime are inseparable.

House Task Force on Violent Crime, *Report to the First Session Twelfth Alaska Legislative* at 8-9 (1981).

erendum election is given several options. It may completely prohibit the sale of alcoholic beverages, AS 04.11.490. It may prohibit the sale except by specifically licensed establishments, AS 04.11.492, or by those holding selected types of licenses, AS 04.11.500. Or, it may completely prohibit both the sale and importation of alcoholic beverages, AS 04.11.496. Local referendum elections are conducted under state supervision, and when the results of a local election are certified by the state, violations of any restrictions adopted in the election are subject to criminal prosecution by the state. AS 04.11.502; AS 04.16.200.

The village of St. Mary's held a referendum election under the local option law on September 22, 1981, and voted to prohibit the sale and importation of alcoholic beverages. The prohibition became effective October 1, 1981. During the latter part of 1981, Harrison, a state trooper, was transferred to St. Mary's. On April 16, 1982, Harrison flew an airplane from St. Mary's to Nome, where he purchased vodka and several cases of beer. He returned to St. Mary's with the liquor. The police searched Harrison's residence on April 18th and found over sixty-two liters of beer and 1.75 liters of vodka. Harrison was indicted for the importation of alcohol, in violation of AS 04.11.496(b).[2] AS 04.11.496 provides, in relevant part:

> (a) The following question, appearing alone, may be placed before the voters of a municipality or an established village in accordance with AS 04.11.502: "Shall the sale and importation of alcoholic beverages be prohibited in ... (name of municipality or village)? (yes or no)".
>
> (b) If a majority of the voters vote "yes" on the question set out in (a) of this section, a person, beginning on the first day of the month following certification of the results of the election, may not knowingly send, transport, or bring alcoholic beverages into the municipality or established village.

Prior to trial, Harrison moved to dismiss his indictment on constitutional grounds. He argued that the St. Mary's local option law violated his right to privacy and equal protection and that the distinction between the misdemeanor and felony classifications in the statute violated his right to due process. Harrison also contended that the application of the local option law to his conduct violated the constitutional prohibition against *ex post facto* laws. At the pretrial hearing before Superior Court Judge James R. Blair, Harrison expressly acknowledged the evidence presented by the state indicating a correlation between alcohol abuse and serious health and social problems. Harrison did, however, present expert testimony that the incidence of coronary disease was lower among moderate drinkers than non-drinkers. Harrison's expert also testified that an increased availability of alcohol results in a proportional increase in moderate drinkers and a proportional decrease in heavy users and abstainers. Judge Blair denied Harrison's motions to dismiss. Harrison was subsequently convicted, and now appeals the denial of his motions.

PRIVACY

Harrison claims that the prohibition against importation of alcohol into St. Mary's violates his right to privacy under the Alaska Constitution.[3] In *Ravin v. State*, 537 P.2d 494 (Alaska 1975), the defendant argued that the prohibition of the possession of marijuana violated his right to privacy. The court in *Ravin* noted the traditional standard that applied to a claimed infringement of a fundamental constitutional right:

> Once a fundamental right under the constitution of Alaska has been shown to be involved and it has been further shown that this constitutionally protected right

2. Harrison was also indicted on two other charges, which are not relevant to this appeal.

3. Article I, section 22 of the Alaska Constitution states in part:

> *Right of Privacy.* The right of the people to privacy is recognized and shall not be infringed ...

> has been impaired by governmental action, then the government must come forward and meet its substantial burden of establishing that the abridgement in question was justified by a compelling government interest.

Ravin, 537 P.2d at 497 (footnote omitted) (quoting *Breese v. Smith*, 501 P.2d 159, 171 (Alaska 1972)). However, the court expressed considerable dissatisfaction with the traditional fundamental right/compelling state interest test. *Ravin*, 537 P.2d at 498. The court went on to determine Ravin's privacy claims in the following manner:

> It is appropriate in this case to resolve Ravin's privacy claims by determining whether there is a proper governmental interest in imposing restrictions on marijuana use and whether the means chosen bear a substantial relationship to the legislative purpose. If governmental restrictions interfere with the individual's right to privacy, we will require that the relationship between means and ends be not merely reasonable but close and substantial.
>
> Thus, our undertaking is two-fold: we must first determine the nature of Ravin's right, if any, abridged by [the statute prohibiting possession of marijuana], and, if any rights have been infringed upon, then resolve the further question as to whether the statutory impingement is justified.

Ravin, 537 P.2d at 498.

The court in *Ravin* held that even if it were to use the fundamental right/compelling state interest test, there was no fundamental right, either under the Alaska or federal constitutions, to possess or ingest marijuana. *Ravin*, 537 P.2d at 502. However, because the right of privacy under the Alaska Constitution clearly shielded the ingestion of food, beverages and other substances, subject to overriding public health considerations, the court also concluded that its analysis would not be complete without a closer examination of the right to privacy and the "relevancy of where the right is exercised." *Id.* The court "recognized the distinctive nature of the home as a place where the individual's privacy receives special protection." *Ravin*, 537 P.2d at 503. It concluded:

> This right to privacy would encompass the possession and ingestion of substances such as marijuana in a purely personal, non-commercial context in the home unless the state can meet its substantial burden and show that proscription of possession of marijuana in the home is supportable by achievement of a legitimate state interest.

Ravin, 537 P.2d at 504. The court reviewed the evidence presented at the omnibus hearing and concluded that the use of marijuana does not constitute a significant public health problem, with the exception of persons driving under the influence of cannabis. *Ravin*, 537 P.2d at 506, 509, 511. The court held that, given the evidence demonstrating the relative harmlessness of the drug, an individual's right of privacy in the home outweighed the government's interest in regulating the personal use of marijuana in the home. *Ravin*, 537 P.2d at 511.

In *State v. Erickson*, 574 P.2d 1 (Alaska 1978), the court applied the *Ravin* standard to a claim that the prohibition against cocaine possession and use in the home violated the right to privacy. The court observed that the authorities agreed that cocaine is a more dangerous drug than marijuana. *Erickson*, 574 P.2d at 21–23. For example, cocaine, unlike marijuana, can cause death. *Id.* The court noted the special protection accorded to the home, stating that "[w]here the right to privacy is manifested in terms of interests more squarely within personal autonomy, the balance [of the individual's interest in privacy and the government's interest in health and safety] requires a heavier burden on the state to sustain the legislation in light of the right involved." *Erickson*, 574 P.2d at 22 n.144. In upholding the prohibition against the personal use and possession of cocaine in the home, the court found a "sufficiently close and substantial relationship" between the prohibition and the

legislative purpose of protecting the general health and welfare. *Erickson*, 574 P.2d at 22.

[1] Our first step under *Ravin* is to evaluate the nature of the right abridged by the local option law. Harrison apparently concedes that the right to consume alcohol is not a fundamental or absolute right.[4] Moreover, the right to consume alcohol in the home is not directly at issue in this case. AS 04.11.496(b), the statute under which Harrison was convicted, merely prohibits a person from knowingly sending, transporting, or bringing alcoholic beverages into the community. It does not prohibit the use of alcoholic beverages in the home. Although we conclude that there is no fundamental right to possess or consume alcohol, *see Ravin*, 537 P.2d at 502, this conclusion does not end our analysis. Since there is a strong, if not direct, relationship between regulating importation of alcohol and regulating consumption of alcohol, and since the privacy amendment of the Alaska Constitution clearly "shields the ingestion of food, beverages or other substances," *Ravin*, 537 P.2d at 502, (quoting *Gray v. State*, 525 P.2d 524, 528 (Alaska 1974)), we must more closely examine the right to privacy asserted in this case.

[2] Harrison characterizes the interest in drinking alcoholic beverages as "fundamental to personal lifestyle." We believe that the consumption of alcoholic beverages in the home, while not a fundamental right, touches on a privacy interest that is "more squarely within personal autonomy." *Erickson*, 574 P.2d at 22 n.144. Therefore, even when the state seeks to regulate consumption indirectly, through restrictions on importation, it bears a heavy burden of justifying the regulation as a legitimate health and welfare measure.

These considerations lead us to the second step in the *Ravin* analysis: whether the state has shown both that the local option law is justifiable as a health and welfare measure, and that the means chosen to regulate alcoholic beverages bears a sufficiently close and substantial relationship to the legislative purpose of protecting the public health and welfare.[5] *Ravin v. State*, 537 P.2d at 504. *See also State v. Erickson*, 574 P.2d at 22 (applying the *Ravin* standard to possession of cocaine). In making this determination, we must keep in mind the general proposition set forth in *Ravin*: "the authority of the state to exert control over the individual extends only to activities of the individual which affect others or the public at large as it relates to matters of public health or safety, or to provide for the general welfare." *Ravin*, 537 P.2d at 509.

[3] The evidence presented at the omnibus hearing unmistakably established a correlation between alcohol consumption and poor health, death, family violence, child abuse, and crime. Harrison did not dispute this evidence. Given this evidence, we conclude that the state has met its burden of justifying the local option law as a health and welfare measure. Our conclusion is supported by the supreme court's express recognition of the deleterious effects of consuming alcoholic beverages. In *Ravin v. State*, 537 P.2d at 509–10, the court observed:

> It appears that effects of marijuana on the individual are not serious enough to justify a widespread concern, at least

4. We reject Harrison's claim that the local option law constitutes an impermissible racial classification. Any municipal government or established village may enact a prohibition against the sale or importation of alcoholic beverages. Once enacted, the prohibition applies to all persons in the municipality or village, regardless of race.

5. Harrison vigorously asserts that the legislature's true purpose in enacting the local option law was to "invade the privacy of individual Alaska residents in their homes and prevent them from consuming alcoholic beverages." This claim is without merit. We think the legislature's purpose was to regulate the distribution and availability of substances that are harmful to the health and welfare of Alaskans. The legislature's purpose would be improper only if the consumption of alcoholic beverages was not substantially harmful. *See Erickson*, 574 P.2d at 16.

compared with the far more dangerous effects of alcohol, barbiturates and amphetamines.

In *State v. Erickson*, 574 P.2d at 22, the court, after reviewing the record, noted that "cocaine is probably less dangerous than alcohol." Thus, the Alaska Supreme Court, in concluding that marijuana is a relatively harmless drug and that cocaine is a dangerous enough drug to warrant criminalization of its possession, has expressly found that alcohol is more dangerous than other drugs.

We further believe that there is a sufficiently close and substantial relationship between the local option law and the legislative purpose of protecting the public health and welfare. Harrison contends that each community, regardless of size, location, and composition, has a large group of moderate users and small groups of abstainers and abusers. Harrison points to evidence suggesting that moderate consumption of alcoholic beverages may be medically beneficial. The prohibition of sale and importation enacted by St. Mary's, Harrison argues, improperly punishes all the moderate users of alcoholic beverages in order to address the problems created by the relatively small number of alcohol abusers. Noting that alcoholic beverages can be obtained in other areas, Harrison asserts that prohibiting the sale and importation of alcoholic beverages in St. Mary's is not substantially related to any legitimate state purpose. We disagree.

[4] While moderate use of alcoholic beverages may be beneficial, the evidence showing the harmful effects of consumption is undisputed. The legislature, after considering the severe social costs of alcohol abuse, concluded that all communities should have the option of controlling the level of local distribution and availability. Even though decreased restrictions on the availability of alcoholic beverages may, as Harrison argues, increase the proportion of moderate consumers to alcohol abusers, broadened access to alcoholic beverages will undoubtedly increase the absolute number of alcohol abusers. The threat posed to society by widespread alcohol abuse is enormous. We believe that enactment of Alaska's local option law bears a close and substantial relationship to the legitimate legislative goal of protecting the public health and welfare by curbing the level of alcohol abuse in our state.[6] *See State v. Erickson*, 574 P.2d at 22 and n.144. *Cf. Ravin v. State*, 537 P.2d at 511 (state demonstrated sufficient justification for prohibiting possession of marijuana while driving).

EQUAL PROTECTION

Harrison argues that the state cannot, in the absence of a compelling governmental interest, permit one community to ban the importation of alcoholic beverages and simultaneously permit other communities to allow importation. He argues that, as enacted in St. Mary's, the statute is overinclusive because moderate consumers' access to alcoholic beverages is limited and underinclusive because alcohol-related problems will still occur in nearby areas that have not enacted a local option law.

Alaska takes the following approach to equal protection analysis:

6. We are, furthermore, not persuaded by Harrison's argument that Alaska's local option law violates privacy rights protected by the federal constitution. The federal cases have uniformly held that there is no federal right to consume alcoholic beverages. *See Dunagin v. City of Oxford*, Miss., 489 F.Supp. 763, 771-72 n. 11 (N.D.Miss.1980), *aff'd* 718 F.2d 738 (5th Cir. 1983), *cert. denied*, — U.S. —, 104 S.Ct. 3554, 82 L.Ed.2d 855 (1984); *Felix v. Milliken*, 463 F.Supp. 1360, 1371-72 (E.D.Mich.1978); *Republican College Council of Pennsylvania v. Wimer*, 357 F.Supp. 739, 740 (E.D.Pa.1973). Examples of privacy rights protected by the federal constitution are the right to abortion, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), the right to choose one's spouse, *Loving v. Virginia*, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967), the right to receive information about birth control, *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965), and the right to reproduce, *Skinner v. Oklahoma*, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942). We believe that the consumption of alcoholic beverages does not rise to the same level as these rights.

> In contrast to the rigid tiers of federal equal protection analysis, we have postulated a single sliding scale of review ranging from relaxed scrutiny to strict scrutiny. The applicable standard of review for a given case is to be determined by the importance of the individual rights asserted and by the degree of suspicion with which we view the resulting classification scheme. As legislation burdens more fundamental rights, such as rights to speak and travel freely, it is subjected to more rigorous scrutiny at a more elevated position on our sliding scale. Likewise, laws which embody classification schemes that are more constitutionally suspect, such as laws discriminating against racial or ethnic minorities, are more strictly scrutinized. This approach was first announced in *State v. Erickson*, ...
>
> Having selected a standard of review on the *Erickson* sliding scale, we then apply it to the challenged legislation. This is done by scrutinizing the importance of the governmental interests which it is asserted that the legislation is designed to serve and the closeness of the means-to-ends fit between the legislation and those interests. As the level of scrutiny selected is higher on the *Erickson* scale, we require that the asserted governmental interests be relatively more compelling and that the legislation's means-to-ends fit be correspondingly closer. On the other hand, if relaxed scrutiny is indicated, less important governmental objectives will suffice and a greater degree of over/or underinclusiveness in the means-to-ends fit will be tolerated. As a minimum, we require that the legislation be based on a legitimate public purpose and that the classification "be reasonable, not arbitrary, and ... rest upon some ground of difference having a fair and substantial relation to the object of the legislation ...."

State v. Ostrosky, 667 P.2d 1184, 1192–93 (Alaska 1983) (footnotes and citations omitted), *appeal dismissed*, — U.S. —, 104 S.Ct. 2379, 81 L.Ed.2d 339 (1984).

As we have previously indicated in connection with the privacy issue, the individual interest asserted by Harrison is not a fundamental right; however, it should be viewed with a higher level of scrutiny than is required under the traditional "rational basis" test, because the consumption of alcoholic beverages is an interest "squarely within personal autonomy." *Erickson*, 574 P.2d at 22 n. 144. We believe that the state's compelling interest in curbing the problem of alcohol abuse cannot be ignored. In addressing regulations of the commercial sale of alcohol, the supreme court has noted:

> The legislature was dealing with a business which, unlike other commercial enterprises, possesses the capacity for grave and harmful effects upon the public welfare.... It is because of this that there may be either complete prohibition, if the legislature chooses to follow that course, or if not, that there may be conditions imposed which will have the tendency to afford the greatest degree of protection to the citizens of the state.

Boehl v. Sabre Jet Room, Inc., 349 P.2d 585, 589 (Alaska 1960) (footnote omitted). Given the compelling nature of the interest asserted by the state, we conclude that the provisions of Alaska's local option law are reasonable and sufficiently related to the legislative goal sought to be accomplished by the statute.

[5, 6] Equal protection does not require perfect equality and uniformity in the application of a regulatory scheme. *Suber v. Alaska State Bond Committee*, 414 P.2d 546, 554 (Alaska 1966). Thus, the statute does not violate equal protection simply because moderate consumers may not have access to alcoholic beverages in a community that has enacted a local option law. As we have already indicated in our privacy analysis, the use of the local option law to address the alcohol abuser bears a close and substantial relationship to the legislative goal of protecting the public health and welfare, even though the law may have the effect of preventing moderate users from consuming alcoholic beverages.

[7, 8] Harrison also argues that the local option law is underinclusive because it permits alcohol abuse to continue in communities that have chosen not to regulate the consumption of alcoholic beverages. However, every citizen of the state need not be treated exactly alike, regardless of geographical location and other similar considerations. *McGowan v. Maryland*, 366 U.S. 420, 427, 81 S.Ct. 1101, 1105, 6 L.Ed.2d 393, 400 (1961). The question is whether differences in treatment are reasonable in light of the balance between the importance of the legislative intent, on the one hand, and the interest of the individual, on the other. The local option law applies with equal force on two distinct levels. It applies equally throughout the state by conferring upon all municipalities and established villages the option of restricting the importation or sale of alcoholic beverages. In addition, once a community has enacted a local option law, that law applies equally to all persons in that community. For the purpose of differentiating between communities and defining community boundaries, the local option law relies on the established system of municipal governments previously created by our legislature to permit local handling of a wide variety of governmental matters. We see no basis for concluding that differences in the treatment of citizens from different communities under the local option law should be considered constitutionally significant when those differences result only from the extent to which individual communities elect to implement that law. When the state attacks a complex problem it need not choose between attacking every aspect of that problem and doing nothing at all. *Ravin*, 537 P.2d at 512 n. 71. Under the local option law, similarly situated persons are treated alike. *See State v. Erickson*, 574 P.2d at 11. We conclude that the law does not violate equal protection merely because it gives individual communities the discretion to determine the level of alcohol availability that will be permitted within their boundaries.

Harrison next argues that the penalties for violating the St. Mary's local option law violate equal protection. The penalty provisions classify alcoholic beverages into distilled spirits, wine, and malt beverages. The importation of each type of beverage, up to a specified maximum volume, is punishable as a misdemeanor. The maximum volumes correspond to the percentage of alcohol in each type of beverage. Thus, the maximum volume of distilled spirits that is punishable as a felony is substantially less than that prescribed for malt beverages. Importation of an amount of alcohol that exceeds the maximum levels prescribed for a misdemeanor is punishable as a felony.[7]

Harrison maintains that the felony classification based upon quantity and type of alcoholic beverage violates equal protection because it does not bear a fair and substantial relation to the protection of the public health and welfare. Harrison argues that a quantity distinction should not apply to alcoholic beverages because alcohol is not contraband.

[9, 10] We disagree. Classifications need not be perfect. *Suber v. Alaska Bond Committee*, 414 P.2d 546, 554 (Alaska 1966). The classification in this case is not irrational. The potential for harm increases with the amount of alcohol consumed; therefore, the legislature could have reasonably believed that punishing the larger importer more severely bore a fair and substantial relationship to the goal of reducing alcohol-related problems. More severe sanctions based on increased quantities of drugs are common. *See generally* AS 11.71.040–.080 (statutes govern-

7. AS 04.16.200(e) provides:

A person who sends, transports, or brings alcoholic beverages into a municipality or established village in violation of AS 04.11.496 is, upon conviction,

(1) guilty of a class A misdemeanor if the quantity is less than 12 liters of distilled spirits, 24 liters of wine, or 45 liters of malt beverages; or

(2) guilty of a class C felony if the quantity imported is 12 liters or more of distilled spirits, 24 liters or more of wine, or 45 liters or more of malt beverages.

ing controlled substances).[8] Moreover, the quantity distinctions between the respective beverages are reasonable. Distilled spirits have the highest percentage of alcohol, with wine and beer, respectively, having lower percentages. As the percentage of alcohol increases, the amount of beverage required to become intoxicated decreases. Thus, the significantly lower threshhold volumes for felony criminal sanctions for importation of distilled spirits, as opposed to wine, and for wine, as opposed to malt beverages, are reasonable. We therefore do not find Harrison's equal protection challenge persuasive.

DUE PROCESS

Harrison argues that his constitutional right to due process was violated because, under AS 04.16.200(e), the statutory distinction between a misdemeanant and a felon is based solely on the type and quantity of alcoholic beverages imported. Harrison posits that it would be irrational to enhance the punishment for importation based on the quantities of alcoholic beverages involved if the importation were solely for the personal use of the importer. Thus, Harrison reasons that the distinction between felony and misdemeanor importation creates an irrebutable presumption that larger quantities of alcoholic beverages are imported for sale. Harrison therefore concludes that the trial court erred in refusing to instruct the jury that if it found credible evidence that he did not intend to sell or distribute the alcoholic beverages he imported to St. Mary's, it was required to acquit him.

[11] Harrison's claim is without merit, since his initial premise is mistaken. The greater the volume of alcoholic beverages imported, the greater the potential for abuse, whether importation is for sale or personal use. A person who imports a larger quantity of alcoholic beverages for personal use will be capable of maintaining a high level of intoxication for an extended period of time and may create a continuing problem of alcohol abuse. A long-term problem of this type is potentially as costly and dangerous to a community as the shorter term problem that might result if the same quantity of alcoholic beverage was imported and sold to a number of people who consumed it immediately. As Judge Blair found, the statute is silent on the issue of intent: it sanctions importation, whether it be for personal use or for sale. The cases upon which Harrison relies, *Leary v. United States*, 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969), and *Manley v. Georgia*, 279 U.S. 1, 49 S.Ct. 215, 73 L.Ed. 575 (1929), are inapposite, because each of the statutes in those cases specifically sets forth a presumption and each presumption was found to be invalid. Harrison speculates on the legislature's intent and asks us to imply a presumption on the basis of his speculation. We decline to do so.

Harrison also alleges that the local option law unfairly permits persons charged with sale of alcoholic beverages to raise a defense that is unavailable to persons charged with importation. AS 04.11.010[9]

8. Harrison submits that the criminal statutes subjecting offenders to varying degrees of punishment based on quantities, *e.g.*, theft, forgery, and sale of drug laws, are irrelevant because the conduct of importing alcohol is *malum prohibitum* rather than *malum in se*. We do not find this distinction persuasive. We note that Harrison has not cited any cases that would require us to condemn the quantity distinctions because the regulated conduct is *malum prohibitum* rather than *malum in se*. Moreover, it is arguable that many of the offenses established by statutes dealing with controlled substances are *malum prohibitum*, rather than *malum in se*. Thus, the validity of the distinction Harrison seeks to draw between alcoholic beverages and other controlled substances is subject to serious question.

9. AS 04.11.010 provides:

(a) Except as provided in AS 04.11.020, a person may not manufacture, sell, offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage unless under license or permit issued under this title.

(b) A person may not solicit or receive orders for the delivery of an alcoholic beverage in an area where the results of a local option election have, under AS 04.11.490—04.11.500, prohibited the board from issuing, renewing or transferring one or more types of licenses or permits under this title, unless the person

has two provisions. Section (a) prohibits the sale of alcoholic beverages without a license or permit. Section (b) prohibits the solicitation or receipt of orders for the delivery of alcoholic beverages in local option areas. Importation into local option areas is separately prohibited by AS 04.11.-496(b).[10] Under AS 04.16.200(b)(3), a person convicted under AS 04.11.010(a) or (b) of selling, or of soliciting or receiving orders for alcoholic beverages in a local option area, is guilty of a felony if the quantity of alcohol involved is more than a specified amount. The specified amounts correspond to those in AS 04.16.200(e)(2), the penalty provisions for importation into a local option area in violation of AS 04.11.-496, under which Harrison was convicted.[11] However, one charged under AS 04.11.010 with sale or soliciting or receiving orders in a local option area has an affirmative defense. AS 04.16.200(c) provides:

> It is an affirmative defense to a prosecution under (a) of this section that no profit was involved in the solicitation or receipt of an order for the delivery of an alcoholic beverage.

This defense is not available to one charged with importing alcoholic beverages into a local option area under AS 04.16.200(e). Harrison argues that restriction of the statutory defense of lack of profit constitutes a violation of due process.

[12, 13] We disagree. Harrison was charged with felony importation under AS 04.11.496 and 04.16.200(e) because he brought over forty-five liters of malt beverages into a local option area. The lack of profit defense in AS 04.16.200(c) applies only to misdemeanor prosecutions under AS 04.16.200(a). Thus, the defense is unavailable in a felony prosecution under either AS 04.16.200(b)(3) (sale, or solicitation or receipt of orders in a local option area for large quantities), or AS 04.16.200(e)(2) (importation into a local option area of large quantities). No person charged with a felony under any section of AS 04.16.200 can properly assert the defense of lack of profit. The statute treats all persons charged with felonies alike and, therefore, fairly.

[14, 15] The affirmative defense of lack of profit might be construed to apply to one charged with the misdemeanor sale of a small quantity of alcoholic beverages in a local option area and not to apply to the misdemeanor importation of the same quantity in a local option area. *See* AS 04.16.200(c) and (e)(1). However, Harrison, as a felon, has no standing to challenge the misdemeanor provisions. In any event, the legislature enacted the local option law to

is licensed under this title and the order is actually received by that person from the purchaser of the alcoholic beverage. A person who violates this subsection is punishable upon conviction under AS 04.16.200(a) or (b).

10. AS 04.11.496(b) provides, in pertinent part:
> If a majority of the voters vote "yes" on the question set out in (a) of this section, a person, beginning on the first day of the month following certification of the results of the election, may not knowingly send, transport, or bring alcoholic beverages into the municipality or established village....

11. AS 04.16.200 states, in pertinent part:
> *Unlicensed persons.* (a) A person who violates AS 04.11.010 is, upon conviction, guilty of a class A misdemeanor.
>
> (b) A person who violates AS 04.11.010 in an area where the results of a local option election have, under AS 04.11.490–04.11.500, prohibited the board from issuing, renewing, or transferring one or more types of licenses or permits under this title in the area is, upon conviction, guilty of a class C felony, if
>
> (1) he has previously been convicted of a violation of AS 04.11.010;
>
> (2) the sale or offer for sale was made to a person under 19 years of age; or
>
> (3) the quantity of alcoholic beverages sold or offered for sale is 12 liters or more of distilled spirits, 24 liters or more of wine, or 45 liters or more of malt beverages.
>
> ....
>
> (e) A person who sends, transports, or brings alcoholic beverages into a municipality or established village in violation of AS 04.11.-496 is, upon conviction,
>
> (1) guilty of a class A misdemeanor if the quantity imported is less than 12 liters of distilled spirits, 24 liters of wine, or 45 liters or more of malt beverages; or
>
> (2) guilty of a class C felony if the quantity imported is 12 liters or more of distilled spirits, 24 liters or more of wine, or 45 liters or more of malt beverages.

regulate the importation of alcoholic beverages, not to regulate simple possession. The affirmative defense of lack of profit was meant to be available in cases of casual distribution that occurred as an incident of lawful possession, where the distributor did not unlawfully import the alcoholic beverages in his or her possession. It would not necessarily be irrational for the legislature to refuse to extend the defense to a person who unlawfully imports alcohol into a community that has voted to prohibit both the sale and importation of alcoholic beverages.

EX POST FACTO LAW

Alaska's local option statute was enacted in 1980. A local option election was held in St. Mary's on September 22, 1981. The community voted to ban importation; the prohibition became effective October 1, 1981. According to § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, Alaska must preclear all changes relating to "voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting." Alaska submitted the local option legislation on April 1, 1982, and obtained conditional clearance on May 17, 1982. Final approval was obtained soon after. When Harrison imported alcohol into St. Mary's on April 16, 1982, the local statute had been submitted but approval had not yet been obtained.

Article I, § 15 of the Alaska Constitution provides, "No bill of attainder or ex post facto law shall be passed." Judge Blair denied Harrison's motion to dismiss the indictment on *ex post facto* grounds, ruling:

> There's no argument or finding of any deliberate defiance of the Voting Rights Act; there does not appear to be any discriminatory purpose or effect. The Supreme Court does have three cases that are on point: *Allen v. State Board of Elections*, 393 U.S. 544 [89 S.Ct. 817, 22 L.Ed.2d 1]; *Perkins v. Mathews*, 400 U.S. [379] at 379 [91 S.Ct. 431 at 431, 27 L.Ed.2d 476] and *Berry v. Doles*, 438 U.S. 190 [98 S.Ct. 2692, 57 L.Ed.2d 693]. The Supreme Court has adopted the rule that if the election is precleared by the Justice Department within 30 days of the Court's decision, then the election will not be invalidated. This case didn't have any approval prior to the criminal conduct but we have now had that clearance by the Justice Department. It would appear that the U.S. Supreme Court decisions would indicate that the appropriate—or that it would be inappropriate to declare that the ordinance is not effective and that the election should be invalidated. Accordingly, that motion is denied.

Harrison contends that since the local option statute had not been approved by the federal government when he brought alcoholic beverages into St. Mary's, his conduct was not criminal. In support of his argument, Harrison quotes *Hotch v. United States*, 212 F.2d 280, 284 (9th Cir.1954) (emphasis in original): "a law which has *not* been duly enacted is not a law, and therefore a person who does not comply with its provisions cannot be guilty of any crime." Relying on *Berry v. Doles*, 438 U.S. 190, 98 S.Ct. 2692, 57 L.Ed.2d 693 (1978), Harrison also contends that election results are invalid and unenforceable until approval is obtained.

[16] Harrison's analysis is not persuasive. In *Hotch*, the conviction was overturned because the regulation had not been published, as required by the Federal Register Act and the Administrative Procedure Act. The Federal Register Act expressly provided that a document was not valid until published. The Voting Rights Act, which Harrison claims was violated in this case, does not contain an analogous provision. Thus, the statutory interpretation in *Hotch* is not controlling.

[17] In addition, *Berry* does not support Harrison's position. At issue in that case was a 1968 statute that provided for a partial staggering of the terms of three posts of the Peach County Board of Commissioners of Roads and Revenues. Berry unsuccessfully tried to enjoin the 1976 primary election on the ground that § 5 preclearance for the 1968 law had not been

obtained. After the election, a district court enjoined the future enforcement of the 1968 statute until approval was obtained but refused to set aside the election because the electoral changes were "technical" and there was no discriminatory purpose or effect. Berry appealed. The United States Supreme Court remanded the case, holding that the district court should issue an order giving the state thirty days to obtain § 5 approval: "[I]f approval is obtained, the matter will be at an end. If approval is denied, appellants are free to renew to the District Court their request for simultaneous election of all members of the Board at the 1978 general election." *Berry*, 438 U.S. at 193, 98 S.Ct. at 2694, 57 L.Ed.2d at 696. Thus, under *Berry*, the failure to obtain preclearance does not automatically invalidate election results, at least where clearance is ultimately granted. *See also Perkins v. Matthews*, 400 U.S. 379, 396–97, 91 S.Ct. 431, 440–41, 27 L.Ed.2d 476, 489 (1971) (court finds § 5 violation and remands to district court to determine appropriate remedy); *Crowe v. Lucas*, 472 F.Supp. 937, 945 (N.D.Miss. 1979) (registration changes cleared after implementation but prior to election satisfied preclearance requirement of § 5).

[18] The purpose of the Voting Rights Act and the facts of this case also convince us that Judge Blair's ruling was proper. Congress enacted the Voting Rights Act of 1965 to prevent discriminatory practices that exclude minorities from the electoral process. *South Carolina v. Katzenbach*, 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). As Judge Blair found, there was no allegation of any discriminatory purpose or effect or a deliberate defiance of the Voting Rights Act that may invalidate the election, *Allen v. State Board of Elections*, 393 U.S. 544, 571–72, 89 S.Ct. 817, 834–35, 22 L.Ed.2d 1, 20–21 (1969), and Harrison raises none on appeal. The record contains no indication that Alaska's local option law or the St. Mary's election were in any way improper under the Voting Rights Act except for the formality of not obtaining preclearance. Nor did Harrison allege any irregularities. In these circumstances, we think Justice Powell's concurrence in *Berry* is particularly apt:

> [W]hen courts are called upon to decide whether to grant retroactive relief, they should distinguish the minor or technical change from the substantive change that is likely to result in discrimination....
>
> It must be remembered that the Voting Rights Act imposes restrictions unique in the history of our country on a limited number of selected States. [Courts] need to bring a measure of common sense to its application....

Berry, 438 U.S. at 200–01, 98 S.Ct. at 2697–98, 57 L.Ed.2d at 701 (footnotes omitted).

We do not read the federal cases to hold that the results of an election are invalid or unenforceable until preclearance is obtained. Rather, these cases indicate that where a state has failed to obtain the required preclearance, the election results are subject to invalidation. Mere technical violations of the procedural requirements for preclearance, however, are an insufficient basis for invalidation: a substantive violation, one that could result in denial of preclearance under the act, must be shown. However, "[i]f approval is obtained, the matter will be at an end." *Berry*, 438 U.S. at 193, 98 S.Ct. at 2694, 57 L.Ed.2d at 696.

In the present case, the federal government ultimately approved Alaska's local option law. We hold that the prohibition against the sale and importation of alcoholic beverages into St. Mary's was in effect at the time Harrison brought alcoholic beverages into St. Mary's. Therefore we reject Harrison's claim that his conviction constitutes a violation of the constitutional prohibition against *ex post facto* laws.[12]

12. We note Harrison's claim that the enactment of criminal sanctions makes this case different from those cases where the challenged statute merely changed an aspect of the electoral process. However, Harrison has not cited us to any case that makes this distinction or would require us to suspend the enforcement of the St. Mary's local option law while preclearance was pending.

[19] Harrison argues in the alternative that even if the prohibition was in effect when he brought alcohol into St. Mary's, he was deprived of adequate notice that his conduct was criminal because preclearance for the election had not been obtained. This argument is without merit. Harrison does not allege that he detrimentally relied on a good faith belief that the St. Mary's election had not been precleared and was potentially invalid. In fact, Harrison admitted that he was fully aware of the illegality of his actions. He cannot now claim he lacked notice.

The conviction is AFFIRMED.

Jeffery WELLS, Appellant,

v.

STATE of Alaska, Appellee.

Nos. 7479, 7663.

Court of Appeals of Alaska.

Sept. 7, 1984.

Defendant was convicted in Superior Court, First Judicial District, Juneau, Rodger W. Pegues, J., of fraudulent use of a credit card, and sentenced as a second felony offender based on prior Oregon conviction. Following his escape from prison, defendant was convicted in the Superior Court, Third Judicial District, Anchorage, Daniel A. Moore, Jr., J., of escape, sentenced as a third felony offender, and he appealed. The Court of Appeals, Singleton, J., held that: (1) escape under Alaska law is a continuing offense; defendant relying on necessity to justify escape must present some evidence justifying his continued absence from custody as well as his initial departure; (2) evidence was insufficient to establish necessity defense to justify defendant's escape; (3) decisions to treat defendant as a second and third felony offender were proper; and (4) defendant's escape sentence was not clearly mistaken.

Affirmed.

1. Escape ⇐1, 6

Escape under Alaska law is a continuing offense; defendant relying on necessity to justify escape must present some evidence justifying his continued absence from custody as well as his initial departure. AS 01.10.010, 11.81.320.

2. Escape ⇐6

Evidence that State had failed to provide defendant with adequate medical attention while he was present and to meet his needs for psychological counseling was insufficient to raise necessity defense to justify defendant's escape. AS 01.10.010, 11.81.320.

3. Escape ⇐11

Evidence that defendant, while in prison, faced immediate threat of physical injury by gang of fellow prisoners outraged that he had warned another inmate of gang's intent to hijack some marijuana, without evidence indicating that defendant's continued absence from prison following escape resulted from duress, or otherwise justifying defendant's continued absence, did not warrant jury instruction on defense of necessity to justify escape. AS 01.10.010, 11.81.320.

4. Criminal Law ⇐1202.7

Defendant who was convicted of escape while serving two-year presumptive sentence for fraudulent use of a credit card was properly treated as a second felony offender following fraudulent use of credit card conviction and third felony offender following escape conviction where he had been previously convicted of burglary in the second degree in Oregon under statute substantially identical to Alaska second-degree burglary statute, although Oregon court had reduced felony conviction to misdemeanor at sentencing. AS 11.46.285, 11.46.310, 11.56.310(a)(1)(A), 12.55.145(a)(2); ORS 161.705, 164.215.

RAYMOND WHITFIELD

TESTIMONY BEFORE THE SELECT COMMITTEE

ON NARCOTICS ABUSE AND CONTROL

U.S. HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 1988

Chairman Rangel, members of this Select Committee, I welcome your invitation to testify regarding the proposals to legalize drugs. As you know, I am an ex-drug abuser and ex-offender, but I ask you to hear my testimony as not only coming from those two life experiences because today, I am also a husband, parent, grandparent, tax payer, a professional and productive member of the Washington, D.C. community. Hopefully, my testimony will reflect these dimensions and my concern about drug abuse.

If I understand the purpose of this hearing correctly, it has been called to discuss the efficacy of legalizing narcotics. To my knowledge, no one has clearly stated which narcotics we're concerned with or if the proponents of legalization mean all narcotics that are currently illegal. This being my understanding, I hope my statement will still have relevancy when this issue is decided.

A couple of weeks ago, I watched the very skillful Mr. Koppel on his Nightline program attempt to get some clarity on this point. In my estimation, he was frustrated in his attempt, but what was very clear is that everyone had an opinion based on their own assumptions. Mine no doubt will fall in that same category.

As I mentioned earlier, I'm very concerned about drug abuse in all of it's dimensions; prevention, addiction, treatment and the private and public consequences of this destructive behavior. Consequently, I will support any proposal that works positively to reduce or eliminate drug abuse. I do not view the the legalization of narcotics as one of those positive proposals; and this is based on what may be a false assumption that the proposal is made as a measure to reduce drug abuse. Perhaps I'm wrong? Come to think of it, I've heard proponents say many things, but to be honest, I haven't heard any one say "Legalize Today, Be Drug Free Tommorrow".

If the proponents of legalization are not on the team to fight against drug abuse, then their proposal would be better received in another forum. Perhaps at a stock holders meeting of some of the major pharmaceutical companies. But, there are two things I have heard proponents say over and over again. One, is that legalization will take the tremendous, obscene, illegal profits out of drug sales. Two, is that as a result of the profits being removed, the drug related murders, that many areas of the country are plagued with will be reduced or possibly eliminated. To both of these statements, my bottom line comment is, you got to be mad or you must think I am.

Let's just look at number one, that legalization will take the illegal profits out of drug sales. Yes, it will. Illegality will be removed, but the legal profits will still be tremendous and still be obscene. The style, perhaps the color, and the risks of the drug dealer will change, but is that what we're really concerned with? Legal or illegal, the goals of the drug dealer remains the same, to sell drugs. I'm sure that pharmaceutical companies and their stock holders would see an increased value in their portfolios. I doubt very seriously if there would be a corresponding decrease in the incidents of drug abuse. The only things drug abusers are interested in are who has the best dope and an uninterupted supply. I'm sure that current drug addicts would certainly enjoy those benefits, plus the added advantage of quality control that big business would provide. On the other hand, their parents, loved ones and community would still have a dope fiend to contend with. Whatever the causes of drug addiction, none of them will be addressed by legalization. Conversely, many more unanswered questions will be created, i.e. will employment become more or less

available for those legal drug abusers who have been chronically unemployed? Will the treatment centers that city, state, and Federal Governments haven't been able to provide suddenly become available for those who want treatment? Will all treatment be private, only for those who can afford it? Will the legal drug dealers provide treatment? I think not, if the tobacco and alcohol industry can be used as an example. Will legislation be written to protect the civil rights of drug addicts in the areas of employment, housing, insurance, right to hold public office, etc? Or in legalizing drugs would we also be legally relegating drug abusers to a completely new, lesser status, not exactly criminal, but much less that what we currently think of as the status of an American Citizen? Can our already overburdened social service and health systems handle, what I believe will be, an increased need for their services? I'm certain our new drug dealers will be as skilled as other large corporations at finding tax loopholes, so let's not count on them to pay for the cost of their human pollution. I firmly believe that those who are in favor of legalization simply want a piece of the action with no more concern for the drug abuser and the community than the current drug lords. They will also share the same need to increase the market and their individual market share. Perhaps gang shoot outs in Southeast will become a thing of the past, but their competitive advertising campaigns could be just as deadly.

When I look at their second statement, that legalization will reduce the number of drug related murders, I am not totally convinced. First, let me abuse semantics just a bit and change drug related murders to drug related deaths. When I hear drug related murders, I envision shoot outs in the street with the possibility of innocent people being killed; gangland style executions which are documented and glorified

in our movies and history books, with victims left in dark alleys, rundown apartments or secluded wooded areas, and the media there to inform us of the lawlessness which is threatening the very fabric of our lives. This vision is very threatening, scary. But when I hear drug related deaths, somehow the vision is altered. First of all, the media usually is not there to help us formulate our vision. It just isn't very spectacular and so much easier to ignore. It doesn't threaten us in the same way that drug related murders do, even if the body count is very similar. It doesn't occupy the headlines in the metro sections of newspapers week after week, or provide the obscene pictures on our nightly news broadcasts. And if it isn't reported, it must not be news, therefore, it doesn't present a problem. At least it doesn't present the kind of problem that demands our attention. Yes, I am convinced that the number of media worthy drug related <u>murders</u> would decrease. I am also equally convinced that the number of drug related <u>deaths</u> would be increased.

Good health and long life is no more a by-product of heroin, PCP, cocaine and its dirivatives than is tobacco and cigarettes. If we accept that cigarette smoking is responsible directly or indirectly for hundreds of thousands of deaths each year, can any reasonable person expect less from legalizing drugs that have a much greater destructive potential, both physically and mentally? Folks, the proponents of legalizing narcotics are running a shell game. What their agenda is, I do not claim to know. But, what seems absolutely clear is that their agenda is not participation as a supporter in the struggle against drug abuse. Still, I feel there is something to be gained from this dialogue, besides trashing the proponents of legalization.

Obviously I don't think much of legalizing narcotics, but there is still the question of what shall we do to win this so called war on drugs. In closing, I would like for us to consider some of the things that I believe have brought all of us together today around the issue of drug abuse. Perhaps in reviewing them we may be directed toward searching even harder for solutions. Hopelessness, privilege, a twisted sense of values, and duplicity are the things I have in mind. Hopelessness is the primary reality of one segment of our population. Some have turned to drug abuse to ease their pain and find escape from a reality they feel ill equiped to deal with. Others in this same category, without the educational background to compete in our structured society, have used their entrepreneurial skills on the wild side. They are the young local drug sellers who will put me or anyone else in their graves in an attempt to hold onto what they view as their ticket to success. We have nothing to threaten them with. Many of their lives have been worst than anything the criminal justice system has been able to devise. Privilege is the primary reality of another segment of our population. Some have turned to drug abuse for recreation. They are confident that the term "dope fiend" doesn't apply to them. They are educated, not deprived in the traditional sense, and do not commit street crimes. Still they don't realize that drugs and recreation are diametrically opposed. A twisted sense of values is shared by both groups and is partially responsible for their susceptibility to drug abuse. It allows one group to feel they have no choice and the other to feel that they are marching to the tune of a different drummer.

Duplicity describes the way that our governmental agencies and policy makers have dealt with the issue of drug addiction during my

lifetime. By that I mean while official governmental policy has not overtly supported drug addiction, many of its policies have contributed to it, i.e. the lack of anti-drug abuse education and addiction treatment facilities in major Black Ghettos during the 1940's, 50's and 60's, plus closing the only two federal treatment centers in Lexington, Kentucky and Texas. During that period of time it was not considered a national problem. Minorities and poor whites were mostly addicted to heroin, while middle and upper income whites were still dealing with the myth of cocaine suiting their lifestyle and it not being addictive. Drug addiction did not become a public problem until it reached suburbia in the late sixties and early seventies. That's duplicity. It is also duplicity if our government policy requires us to support drug dealers in the fraudulent name of fighting communism, or stopping drug related deaths. A twisted sense of values can only create havoc and confusion. As a drug abuse consultant, I continually meet youngsters from a variety of environments. The common denominator among them is drug abuse with one or more of the things I've mentioned as a contributing factor. If nothing else I sincerely hope that these hearings illustrate very forcefully that drug abuse is not the root problem. Drug abuse is a very destructive symptom indicating a number of other problems. If this is not recognized, we may be doomed to continually treating symptoms in the form of drug abuse, or other behaviors that are equally destructive. I hope my testimony will help to move the issue of drug abuse prevention beyond dialogue toward accomplishment. Thank you.

RAYMOND WHITFIELD

516 Oneida St., N.E.
Washington, DC 20011
Phone: (202) 529-1929
(202) 371-6611

CAREER GOALS — My career goal is to develop strategies and programs, either as an administrator or consultant, that will assist urban youth in recognizing alternative, positive choices that are available to them which are strong enough to counteract the often negative choices they are faced with daily.

PROFESSIONAL EXPERIENCE

ALTERNATIVE EXPERIENCES, INC.
WASHINGTON, D.C. — 1987-Present

President/Consultant: — Provides consultation services to child care and foster care agencies who are interested in utilizing experiential learning techniques to enhance the development of independent living skills among youngsters; designs and facilitates support group sessions for specific populations, i.e. recovering drug abusers, juvenile delinquents, etc.

Previous Clients: — Mission of the Immaculate Virgin Child Care Agency, NYC
St. Joseph's Children Services, Brooklyn, NY

THE CONSULTING GROUP OF WASHINGTON
WASHINGTON, D.C. — 1987-Present

Consultant/Facilitator — Provides expert consultation and experiential learning workshops for clients which focus on issues involving critical choices in their lives.

CENTER FOR YOUTH DEVELOPMENT, INC.
WASHINGTON, D.C. — 1982-1987

Director/Corporate Secretary — Co-Founded The Center For Youth Development, an organization which researches, develops and administers programs with services to assist urban youth at risk. Supervised the staff and managed daily operations of the Center's programs, including program planning and effective service delivery; participated in proposal preparation and contract negotiation, maintained productive relations with agencies and their personnel, facilitated experiential workshops and support group designs, consulted with the Executive Director and the Director of Training for effective collaboration in program planning and management.

AMERICAN UNIVERSITY
WASHINGTON, DC — 1976-1984

Ass't Director/Residential Life — Responsible to the Director of Residential Life to implement university programs and policies. Selected and supervised support staff and service vendors, designed and facilitated staff training workshops, counseled students and staff, evaluated staff performance, prepared budget and staff projections.

PACIFICA FOUNDATION/WPFW-FM
NATIONAL PUBLIC RADIO
WASHINGTON, D.C. 1978-Present

Independent Radio Program Producer — Produced and hosted nationally distributed criminal justice series, The Inside/Outside Media Collective, which highlighted the spectrum of criminal justice issues. Designed, produced and hosted YOUTH AT RISK a radio production that provided a forum for youth, community people, experts and laymen to discuss youth problems and suggest strategies that will assist youth to adapt positive life styles.

ALPHA SCHOOL (Therapeutic Community)
BROOKLYN, N.Y. 1973-1975

Supervisor — Liaison to social service agencies that provided support to our clients in the areas of health care and income maintenance; provided consultation to counselors for crisis management and conflict resolution among clients.

EAST NEW YORK COMMUNITY CORPORATION
BROOKLYN, N.Y. 1971-1973

Senior Field Supervisor — Monitored the delegated programs of the Neighborhood Youth Corp to determine the level of youth participation and the quality of educational and recreational programming. Recruited and supervised youth gang members between 14-20 years old into Neighborhood Youth Corp programs. Provided supervision and direction for the summer staff. Provided liaison to the community relations office of the local police precincts. Designed/facilitated weekly drug abuse workshops.

EDUCATION

A.A.S Public Administration, Kingsborough Community College, 1975;
B.A. Political Science, School of Government and Public Administration, American University, 1977;
(NTL) National Training Laboratory Courses;
Human Interaction Laboratory, Training Theory and Practice, Management Work Conference In Interpersonal Competence.

BIOGRAPHICAL LISTINGS AND HONORS

Past member, Community Advisory Board, WPFW-FM Radio, member of Pacifica Foundation;
Member: Friends of RAP, Inc.;
Past member, of the National Board, Offender Aid and Restoration;
Who's Who Among Students In American Colleges and Universities, American University Washington, D.C.;
Student Activities Gold key award, Kingsborough Community College, Brooklyn, N.Y.

INTERESTS/HOBBIES Politics, Chess, Photography, Jazz

PERSONAL DATA Additional information and/or references will be furnished upon request

SUBMISSIONS FOR THE RECORD

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3 November 1988

Mr. Ulrich J. Dembowski
Select Committee on Narcotics
Abuse and Control
H2-234, HOB Annex 2
Washington, D. C. 20515-6425

Re: Committee Hearings of the U. S. House of Representatives

Dear Mr. Dembowski:

Enclosed please find the corrected transcript. I am also including a copy of the proposed legislation which was provided to the Committee staff on the day of my testimony.

Thank you very much for your courtesy, efficiency and cooperation.

Sincerely,

Marvin D. Miller/asv

MARVIN D. MILLER

MDM:asv

DISCUSSION DRAFT

___th Congress
___ Session

H.R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr./Mrs./Ms. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Internal Revenue Code to tax and regulate the interstate and foreign commerce in Cannabis, to amend the Controlled Substances Act to delete marijuana and for other purposes.

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled,

That Title 26 of the United States Code is amended by inserting following Chapter 53 a new chapter to read as follows:

TITLE 26, UNITED STATES CODE
SUBTITLE E, EXCISE TAXES
CHAPTER 54, CANNABIS

Subchapter

A. Short title; statement of policy; definitions.
    5901. Short title
    5902. Statement of policy
    5903. Definitions

B. Administration.
    5904. Administration

C. Licenses.
    5921. Unlawful businessess
    5922. Licenses requirements and qualifications
    5923. Exemptions
    5924. Commercial cultivation, possession and trading of cannabis

D. Revenue.
    5931. Imposition of tax
    5932. Liability, determination and method of payments
    5933. Exemption from taxation

5934. Credit, refund or allowance of tax
5935. Losses caused by disaster
5936. Disposition of revenue

E. Advertising.
5941. Advertising

F. General Provisions.
5951. Application to states and territories
5952. Separability
5953. Unfair competition and unlawful practices

G. Enforcement.
5961. Inspection
5962. Criminal penalties
5963. Civil penalties
5964. Detention of containers
5965. Disposition of and release of seized property
5966. Forfeiture of cannabis not stamped, marked or branded as required by law
5967. Burden of proof in cases of seizure of cannabis
5968. Penalty for having, possessing or using cannabis or property intended to be used in violating provisions of this chapter

SUBCHAPTER A - SHORT TITLE: STATEMENT OF POLICY: DEFINITIONS

5901. Short title. This chapter shall be called The Cannabis Revenue Act of 1983.

5902. Statement of policy. It is the policy of Congress and the purpose of this chapter to establish a comprehensive federal program to regulate the commerce in cannabis in the United States whereby

(a) the abuse of cannabis is diminished;

(b) the use of cannabis by children is curtailed;

(c) the public health is protected by regulating the purity of cannabis in commerce;

(d) illegal trafficking in cannabis is eliminated;

(e) the commerce in cannabis is taxed sufficiently to generate revenue commensurate to its place in the national economy;

(f) national resources shall no longer be diverted to ineffective law enforcement efforts regarding cannabis;

(g) medical research concerning cannabis is encouraged; and

(h) barriers to the development of a domestic hemp industry are removed.

5903. Definitions.

(a) The term "cultivation" as used in this chapter means the propagation, nurture or harvest of cannabis.

(b) The term "processing" as used in this chapter means the importing, cleaning, testing, preparation, packaging or labelling of cannabis for sale.

(c) The term "cannabis" as used in this chapter means any part of the plant Cannabis sativa L. or any species thereof, including Cannabis indica, Cannabis ruderalis, or any other variety of the species Cannabis sativa L. whether growing or not; the seeds thereof, and resin extracted from any part of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(d) The term "trade" as used in this chapter means the sale, transfer, exportation, or distribution for any kind of consideration, of cannabis, whether by wholesale or retail and includes speculation, or trading in contracts for future delivery or purchase of any quantity of cannabis.

(e) The term "secretary" as used in this chapter means the Secretary of the Treasury.

(f) The term "commercial" as used in this chapter means of, or related to, a non-gratuitous exchange; or an exchange with consideration.

(g) The term "United States" as used in this chapter means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia.

(h) The term "wholesale" as used in this chapter means the sale or transfer to a retailer, or sale or transfer for purposes other than human consumption.

(i) The term "purity" as used in this chapter means freedom from substances not indigenous to cannabis, except for water.

(j) The term "gratuitous" as used in this chapter means without consideration; non-commercial. Transfer of anything

of value contemporaneously with the sale or tendering for sale of any goods, services or other things of value, shall be deemed not gratuitous.

5904. Administration.

(a) The Secretary of the Treasury shall enforce this chapter.

(b) The Secretary is authorized and directed to prescribe such rules and regulations as may be necessary to carry out the provisions of this chapter.

(c) The Secretary is authorized to require in such manner and form as shall be prescribed, such reports as are necessary to carry out his powers or duties.

(d) Not later than March 1 of each year following the effective date of this chapter, the Secretary shall submit to the Speaker of the House of Representatives and the President of the Senate a comprehensive and detailed written report with respect to the cultivaiton, processing, storage, handling and distribution of cannabis subject to the provisions of this chapter, the inspection of establishments operated in connection therewith and recommendations for legislation to improve the regulation of cannabis.

(e) The Secretary shall by regulation prescribe the type or kinds of containers which may be used to contain, store, transfer, convey, remove or withdraw cannabis prior to packing for sale at retail.

(f) In carrying out his duties precribed by this chapter, the Secretary shall consult with the Secretary of Health and Human Services in order to further the purposes of this chapter.

SUBCHAPTER C - LICENSES

5921. Unlawful businesses.

(a) It shall be unlawful, except pursuant to a license issued under this chapter by the Secretary, and in compliance with the regulations promulgated under the authority of this chapter;

1. to cultivate cannabis for other personal use;

2. to process cannabis for other than for personal use

3. to distribute cannabis for consideration to any person

4. to possess, cultivate or process cannabis with intent to distribute for consideration to any person;

5. to otherwise be engaged in commerce in cannabis for consideration.

(b) As used in this section, and Section 5962, "personal use" means the use or consumption of cannabis by a person or members of his immediate household and donees. The possession of in excess of the greater of

1. 25 cannabis plants; or

2. 5 pounds of crude cannabis

shall raise a rebuttable presumption that possession is not for personal use.

(c) Notwithstanding the foregoing, nothing herein shall be construed to authorize commerce in hashish or resin extracted from the cannabis plant.

5922. License requirements and qualifications.

(a) Applications for license. Every person, before commencing business as a cultivator, processor or trader of cannabis, and at such other time as the Secretary shall by regulation prescribe, shall make application for and obtain the appropriate license prescribed by this subsection. The application shall be in such form as the Secretary shall prescribe and shall set forth, truthfully and accurately, the information called for on the form. Applications shall not be denied unless the Secretary or his designee finds by a preponderance of the evidence following notice and a hearing, that such applicant has failed to disclose any material information required or made any material false statement in the application therefor; provided, however, that no license under this chapter shall be issued to any applicant who has not reached the age of 21 years.

(b) Conviction of any cannabis-related offense under state or federal law, prior to the effective date of this Act, shall not disqualify any applicant.

(c) Cannabis licenses issued pursuant to this chapter shall expire upon the 2nd anniversary of the issuance thereof, unless renewed.

(d) The surviving spouse or legal representative of a deceased noncorporate licensee may continue to exercise the license for 30 days following the death of the licensee, but thereafter only with the written consent of the Secretary,

which consent shall expire, if not sooner revoked, 15 months from the date of death. Consent shall be withheld unless the said surviving spouse or legal representative meets the qualifications prescribed by this chapter for the type of license ought to be retained.

(e) The Secretary, his agents and employees, may, during reasonable business hours and without notice thereof, conduct such inspections of the licensed premises, including the books, records and accounts of the licensee, as he shall deem appropriate for the enforcement of this chapter.

(f) Appeals. Any person aggrieved by an action of the Secretary shall have such recourse as provided in the Act of September 6, 1966, P.L. 89-554, as amended (Title 5, United States Code, Section 551 et seq. and Section 701 et. seq.)

(g) Sale or distribution of cannabis by vending machine or similar automation is prohibited.

(h) No license issued under this chapter shall be transferrable to any other person, except in accordance with the subsection (d) of this section concerning death of the licensee.

5923. Exemptions. The prohibitions contained in sections 5921 (a) (4) and 5921 (a) (5) shall not apply to a common carrier or freight forwarder for hire.

5924. Commercial cultivation, processing and trading of cannabis.

(a) Commercial cultivation.

1. The Secretary shall issue cultivation licenses to any person who shall meet the requirements prescribed in 5922 of this chapter.

2. The holding of a commercial cultivation license shall be conditional upon the compliance with this chapter and the regulations promulgated hereunder.

3. It shall be unlawful for the holder of a commercial cultivation license to distribute cannabis commercially to any person not holding a current license issued by authority of this chapter. A copy of the license bearing the seal of the Secretary shall constitute prima facie evidence of such license. Except in case of conspiracy or accomplice liability, holders of a commercial cultivation license shall not be liable for the acts of transferees in violation of this chapter. For purposes of this provision, transfer is accomplished when the cultivator makes physical delivery of

the cannabis, despite any reservation of a security interest or delivery of a document of title at a different time or place.

(b) Processing.

1. The Secretary shall issue processing licenses to any person who shall meet the requirements prescribed in section 5922 of this chapter.

2. The holding of a processing license shall be conditional upon compliance with this chapter and the regulations promulgated hereunder.

3. No person licensed to process shall distribute packaged cannabis if the package fails to bear a permanent label containing the following information, in such style and form as the Secretary may prescribe:

a. the identity of the contents by species and variety;

b. the name and place of business of the processor;

c. the following statements:

(1) "Caution: Smoking any substance irritates the mouth, throat, breathing passages and lungs, and may be harmful to other organs. Inexperience or overdose may cause confusion or disorientation. Do not use around or when operating hazardous equipment. Do not use during pregnancy. The operation of a motor vehicle under the influence of cannabis, alcohol, or any other intoxicant is a serious crime, and may result in the loss of your license to drive."

d. the net quantity of contents in terms of dry weight by grams;

e. potency as expressed as the percentage of THC by dry weight, without seeds;

f. such marking or branding as shall prevent deception of the consumer with respect to the contents of the quality thereof.

4. The Secretary shall promulgate regulations concerning the labelling of cannabis:

a. to prohibit deception of the consumer with respect to such cannabis or the quantity thereof and to prohibit, irrespective of falsity, such statements relating to age, cultivation processes, analyses, guarantees and scientific or irrelevant matters as the Secretary finds to be likely to mislead the consumers;

b. to prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene or indecent;

c. to prevent deception of the consumer by use of a trade or brand name of any living individual of public prominence, or existing private or public organization, or is a name that is in imulation or is an abbreviation thereof, and to prevent the use of a graphic, pictorial or emblematic representation of any such individual or organization, if the use of such name or representative is likely to lead the consumer to believe that the product has been endorsed, made or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization. This clause shall not apply to the use of the name of any person engaged in business as a cultivator, processor, distributor, importer or retailer of cannabis, nor to the use by any person of a trade or brand name used by him or his predecessor in interest prior to the effective date of this chapter. This clause shall not apply to regulations requiring, at the time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported cannabis. Provided further, that nothing herein, nor any decision, ruling, or regulation of any department of the Government shall deny the right of any peron to sue any trade name or brand of foreign origin not presently effectively registered in the United States Patent and Trademark Office which has been used by such person or predecessor in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualifications is as conspicuous as such name or brand.

5. It shall be the duty of processing licensees to analyze and test cannabis intended for distribution and to determine potency of such cannabis for the purpose of labeling.

6. It shall be unlawful for any processing licensee to distribute or commercially possess for more that 24 hours any package containing cannabis which falls to bear a tax stamp or such other documentation as the Secretary may prescribe as evidence that the revenue imposed by this chapter has been paid.

7. The provisions of subsections 3, 4, and 5, shall not apply in the case of transfer of unpackaged cannabis between licensed processors.

8. Before any license required by this section is granted to a processor, the Secretary may require a bond in

such form and amount as he may prescribe to insure compliance with the terms of the license and the provisions of this chapter.

9. It shall be unlawful for the holder of a processing license to distribute cannabis to any person not holding a current license issued by authority of this Act.

10. No holder of a processing license shall affix the tax stamps or such other documentation that the Secretary may require pursuant to subsection (4) to any package containing cannabis which contains a dilutant, retardant or accellerator, preservative or any additive of any kind, the effect whereof is to reduce the purity of cannabis to less that 100%.

11. A processing licensee who takes possession of processed cannabis imported into the United States shall comply with all requirements set forth in this subsection.

12. It shall be unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand or label upon cannabis held for distribution in interstate or foreign commerce or after shipment therein, except as authorized by federal law or except pursuant to regulations of the Secretary authorizing relabeling for purposes of compliance with the requirements of this chapter.

(c) Commercial trading.

1. The Secretary shall issue trade licenses to any person meeting the qualifications of 5922 for the sale of cannabis at retail.

2. It shall be unlawful for the holder of a trade license to sell, offer for sale or otherwise transfer with consideration to any person who has not reached the age of 18 years or who is intoxicated.

3. Before any license required by this section is granted to a trader, the Secretary may require a bond on such form and amount as he may prescribe to insure compliance with the terms of the license and the provisions of this chapter.

(d) Research license. The Secretary shall issue research licenses for the conduct of bona fide medical, social, behavioral or other research upon such terms and conditions as he shall prescribe consistent with the purposes of this Act as set forth in 5902.

SUBCHAPTER D - REVENUE

5931. Imposition of Tax. The licensed processor shall remit

to the Secretary on a quarterly basis 90% of gross receipts from the sale of cannabis. For the purposes of this provision, gross receipts shall include all consideration therefor, whether received by the processor or not.

5932. Liability, determination and method of payments.

(a) Liability for tax. The holder of a processing license shall be liable for the taxes imposed thereon by section 5931.

(b) Determination and method of payment. The taxes imposed by 5931 shall be determined at the time of removal of the cannabis from the processor's premises. Such taxes shall be paid on the basis of a return. The secretary shall, by regulation, prescribe the period or event for which such return shall be made, the information to be furnished, the time for making the return, and the time for payment of such taxes. Any postponement under this subsection of the payment of taxes determined at the time of removal may be conditioned upon the filing of such additional bonds, and upon compliance with such requirements, as the secretary may require. All administrative and penal provisions of this title, insofar as applicable, shall apply to any tax imposed by 5931.

(c) Use of government depositaries. The secretary may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed by this chapter, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, time and condition under which the receipt of such tax by such banks and trust companies is to be treated as payment for tax purposes.

(d) Assessment. Whenever any tax required to be paid by this chapter is not paid in full at the time required for such payment, it shall be the duty of the secretary, subject to the limitations prescribed in this chapter, on proof satisfactory to him, to determine the amount of tax to be paid which has been omitted, and to make an assessment therefor against the person liable for the tax. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathmatical error, no such assessment shall be made until and after the person liable for the tax has afforded reasonable notice and opportunity to show cause, in writing, against such assessment.

5933. Exemption from taxation.

(a) Cannabis for research purposes. The Secretary, upon proof by accredited scienfitic authorities or agencies that they are about to engage in or are engaging in research which requires the use of cannabis, may authorize the removal of cannabis from a processor's premises without tax stamps affixed and without the payment of tax, provided, however, that such cannabis packages shall be packaged and clearly marked, "For Research Purposes Only" and bear such other label as he secretary shall by regulation prescribe.

(b) Cannabis products released in bond from customs custody. Cannabis products, imported or brought into the United States, may be released from customs custody, without the payment of a tax, for delivery to a processor duly licensed to import cannabis, in accordance with such rules and regulations and under such bond as the secretary shall prescribe.

(c) Processors of cannabis stalks or hemp shall be exempt from taxation under the terms of this chapter.

(d) Losses.

1. No tax shall be collected in respect of any cannabis lost or destroyed while in bond, except that tax shall be collected

a. in the case of loss by theft, if the secretary shall find that the theft occurred with connivance, collusion, fraud or negligence on the part of the person responsible for the tax, or the owner, consignor, consignee, bailee, or carrier, or the agents of employees of such person; and

b. in the case of voluntary destruction, unless the cannabis was destroyed under government supervision, or on such adequate notice to, and approval by, the secretary as regulations shall provide.

2. In any case in which the cannabis is lost or destroyed, whether by theft or otherwise, the secretary may require, by regulation, the processor or other person liable for the tax to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the burden shall be on the processor or other person liable for the tax to establish to the satisfaction of the secretary, that such loss did not occur as the result of connivance, collusion, fraud, or negligence on his/her part or by the consignor, consignee, bailee, or carrier or the agents or employees of such person.

(e) Packages of cannabis manufactured, imported, or packaged

(1) for export from the United States or (2) for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the requirements of this chapter, but such exemptions shall not apply to cannabis manufactured, imported, or packaged for sale or distribution to members or units of the Armed Forces of the United States.

5934 Credit, refund or allowance of tax.

(a) Credit or refund. Credit or refund of any tax imposed by this chapter shall be allowed or made without interest to the processor or trade licensee on proof satisfactory to the secretary that the claimant processor or trade licensee has paid the tax on cannabis withdrawn by him or lost by fire, casualty, or act of God, while in the possession or ownership of the claimant.

(b) Allowance. If the tax has not yet been paid on the cannabis products proved to have been withdrawn from the market or lost or destroyed as aforesaid, relief from the tax on such articles may be extended upon the filing of a claim for allowance therefor in accordance with such regulations as the secretary shall prescribe.

(c) Limitation. Any claim for credit or refund under this section shall be filed within six months after the date of the withdrawal from the market, loss, or destruction of the articles to which the claim relates, and shall be in such form and contain such information as the secretary shall by regulation prescribe.

5935. Losses caused by disaster.

(a) Authorization. Where the President has determined under the Disaster Relief Act of 1974, that a "major disaster" as defined in such Act has occurred in any part of the United States, the secretary shall pay without interest an amount equal to the amount of the Internal Revenue taxes paid or determined and customs duties paid on cannabis products removed, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of such disaster occurring in such part of the United States on and after the effective date of this section, if such cannabis products were held and intended for sale at the time of such disaster. The payments authorized by this section shall be made to the person holding such cannabis at the time of the disaster.

(c) Claims. No claims shall be allowed under this section unless

1. Filed within six months after the date on which the President makes the determination that the disaster referred

to in subsection (a) has occurred; and

2. The claimant furnished proof to the satisfaction of the secretary that

a. he was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the cannabis products covered by the claim; and

b. he is entitled to payment under this section. Claims under this section shall be filed under such regulations as he secretary shall prescribe.

(c) Destruction of cannabis products. Before the secretary makes payments under this section in respect of the tax, or tax and duty, on the cannabis products condemned by a duly authorized official or rendered unmarketable, such cannabis products shall be destroyed under such supervision as the secretary may prescribe, unless such cannabis products were previously destroyed under supervision satisfactory to the secretary.

(d) Other laws applicable. All provisions of law, including penalties, applicable in respect of Internal Revenue taxes on cannabis products shall insofar as applicable and not inconsistent with this section, be applied in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of such taxes.

5936. Disposition of revenue. All monies received by the secretary under this chapter, whether by cannabis taxes, license or applicable fees, or other such fees as the secretary shall by regulation precribe and collect, shall be deposited to the general fund of the United States treasury.

CHAPTER E - ADVERTISING

5941. Advertising. No person shall, directly or indirectly, personally or through any agent or employee, whether for consideration or gratuitously cause to be published in a newspaper or magazine distributed anywhere in the United States or to be broadcast or cablecast to a radio or television receiver in the United States, or to appear in any display signs or personal solicitation, or any manner of advertising, any advertisement of notice to promote or encourage the consumption or use in any way of cannabis or any cannabis product The preceding prohibition shall not apply to he following:

(a) Cannabis packages, crates, cartons and boxes of cannabis products, provided, however, that no such items shall be used for any display, ornament or fixture on the licensed premises.

(b) Logos contained in private correspondence or trade publications not intended for public distribution.

(c) A single notice reading "Authorized Cannabis Outlet", in a style prescribed by the secretary.

SUBCHAPTER F - GENERAL PROVISIONS

5951. Application to states and territories.

(a) State law not contravened. Nothing in this act shall be construed as authorizing the possession, commercial distribution or possession of cannabis with intent to distribute commercially, in any state or territory in contravention of the laws of such state or territory.

(b) All cannabis transported into any State or Territory or the District of Columbia, and remaining therein for use, consumption, sale or storage therein, shall, upon the arrival within the limits of such State or Territory or the District of Columbia, be subject to the operation and effect of the laws of such State or Territory or the District of Columbia, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

5952. Separability. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.

5953. Unfair competition and unlawful practices. It shall be unlawful for any person engaged as a cultivator, processor, distributor, researcher or retailer of cannabis, directly or indirectly or through an affiliate to require, by agreement or otherwise, that any retailer engaged in the sale of cannabis purchase any such cannabis from such person to the exclusion in whole or in part of cannabis sold or offered for sale by other persons in interstate or foreign commerce if such requirement is made in the course of interstate or foreign commerce, or if such person engages in such practice to such extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce:

(1) by acquiring or holding (after expiration of any existing license) any interest in any license with respect to the premises of the retailer;

(2) by acquiring any interest in real or personal property owned, occupied or used by the retailer in the conduct of his business;

(3) by furnishing, giving, renting, lending or selling to the retailer, any equipment, fixtures, signs, supplied, money services or other thing of value, subject to such exceptions as the secretary shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of htis subsection;

(4) by paying or crediting the retailer for any advertising, display or distribution service;

(5) by guaranteeing any loan or the repayment of any financial obligation of the retailer;

(6) by extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions, as ascertained and prescribed by the secretary; or

(7) by requiring the retailer to take and dispose of certain quota of any of such products.

SUBCHAPTER G - ENFORCEMENT

5961. Inspection. All premises and activities conducted under license issued pursuant to this chapter shall be subject to inspection during reasonable hours. Cultivating, processing and storage of cannabis in violation of this chapter shall be subject to search and seizure in accordance with the Fourth Amendment to the Constitution and the Federal Rules of Criminal Procedure.

5962. Criminal penalties.

(a) Whoever,

1. engages in business as a cultivator, processor, distributor, researcher, importer, or retailer of cannabis without having a current license issued in accordance with this chapter; or

2. with intent to defraud the United States shall purchase, receive, possess, offer for sale or sell or otherwise dispose of, after removal, any cannabis upon which the tax has not been determined in the manner and at the time prescribed by this chapter or regulations thereunder; or

3. with intent to defraud the United States shall purchase, receive, possess, offer for sale or sell or otherwise dispose of, after removal, any cannabis which is not put up in packages not bearing the marks, labels and notices, as required under this section; shall, for each such offense, be fined not more that $, or imprisoned not more that mo./yrs. or both.

(b) Whoever shall possess a quantity of cannabis upon which no tax has been paid, not for personal use as defined in 5921 of this chapter shall be fined not more that $, or imprisoned not more than mo./yrs. or both.

(c) Whoever shall, with intent to defraud the United States, destroy, obliterate, or deface any mark, label or notice prescribed or authorized by this chapter or regulations thereunder, to appear on, or be affixed to, any package of cannabis before such package is emptied, shall be fined not more that , or imprisoned not more that mo./yrs. or both.

5963. Civil penalties.

(a) Whoever willfully ommits, neglects or refuses to comply with any duty imposed upon him by this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall in addition to any other penalty provided in this title, be

liable to penalty of $1,000, to be recovered, with costs of suit, in a civil action, except where a penalty under subsection (b) may be collected from such person by assessment.

(b) Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this title, be liable to a penalty of 5 percent of the tax due but unpaid.

5964. Detention of containers. It shall be lawful for an internal revenue officer to detain any package or other container containing or supposed to contain cannabis when he has reason to believe that the tax imposed by law on such cannabis has not been paid or determined as required by law, or that such package or container is being removed in violation of law; and every such package or container may be held by him at a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture; but such summary detention shall not continue in any case longer than 72 hours without process of law or intervention of the officer to whom such detention is to be reported.

5965. Disposition and release of seized property.

(a) Forfeiture.

1. All cannabis forfeited, summarily or by order of court, under any law of the United States, shall be delivered to the Administrator of General Services to be disposed of as hereinafter provided.

2. The administrator of General Services shall dispose of all cannabis which has been delivered to him pursuant to paragraph (1)

a. by delivery to such government agencies as have a need for such cannabis for medicinal or scientific purposes, or for any other official purpose for which appropriated funds may be expended by a government agency; or

b. by gifts to such eleemosynary institutions as, in his opinion, have a need for such cannabis for medicinal or other lawful purposes; or

c. by destruction.

3. Except as otherwise provided by law, no cannabis which has been seized under any law of the United States may be disposed of in any manner whatsoever except after forfeiture and as provided in this subsection.

4. The Administrator of General Services is authorized to make all rules and regulations necessary to carry out the provision of this subsection.

5. Nothing in this section shall affect the authority of the Secretary, under the customs or internal revenue laws, to remit or mitigate the forfeiture, or alleged forfeiture, of cannabis, or to compromise any civil or criminal case in respect of such cannabis prior to commencement of suit thereon, or to compromise any claim under the customs laws in respect to such cannabis.

(b) All cannabis sold by order of court, or under process of distraint, shall be sold subject to tax; and the purchaser shall immediately, and before he takes possession of said cannabis, pay the tax thereon, pursuant to the applicable provisons of this chapter and in accordance with regulations to be prescribed by the secretary.

(c) Release of seized vessels or vehicles by courts. Notwithstanding any provisions of law relating to the return on bond of any vessel or vehicle seized for the violation of any law of the United States, the court having jurisdiction of the subject matter may, in its discretaion and upon good cause shown by the United States, refuse to order such return of any such vessel or vehicle to the claimant thereof. As used in this subsection, the word "vessel" includes every description of watercraft used, or capable of being used, as means of transportation in water or in water and air; and the word "vehicle" includes every animal and description of carriage or other contrivance used, or capable of being used, as a means of transportation on land or through air.

5966. Forfeiture of cannabis not stamped, marked or branded as required by law.

(a) Unmarked or unbranded packages. All cannabis found in any container or package required by this chapter or any regulation issued pursuant thereto to bear a mark, brand or identificaton, which container or package is not marked, branded or identified in compliance with this chapter and reguations issued pursuant thereto, shall be forfeited to the United States.

(b) Unstamped packages or containers. All cannabis found in any container required by this chapter or any regulations issued pursuant thereto to bear a stamp, which container is not stamped in compliance with this chapter and regulations issued pursuant thereto, shall be forfeited to the United States.

5967. Burden of proof in cases of seizure of cannabis.

Whenever seizure is made of any cannabis found elsewhere than on the premises of a cannabis processing plant, or than in any warehouse authorized by law, or than in the store or place of business of a wholesale cannabis dealer, or than in transit from any one of said places; or if any cannabis found in any one of the places aforesaid, or in transit therefrom, which have not been received into or sent out therefrom in conformity to law, or in regard to which any of the entries required by law or regulations issued pursuant thereto, to be made in respect of such cannabis, have not been made at the time or in the manner required, or in respect to which any owner or person having possession, control or charge of said cannabis, has omitted to do any act required to be done, or has done or committed any act prohibited in regard to said cannabis, the burden of proof shall be upon the claimant of said cannabis to show that no fraud has been committed, and that all the requirements of the law in relation to the payment of the tax have been complied with.

5968. Penalty for having, possessing or using cannabis or property intended to be used in violating provisions of this chapter. It shall be unlawful to have or possess any cannabis or property intended for use in violating any provision of this chapter or regulations issued pursuant thereto, or which has been so used, and every person so having or possessing or using such cannabis or property, shall be fined not more than $5,000, or imprisoned not more than 1 year or both.

REPORTS AND STUDIES

Sec. 2. (a) The Secretary shall report to the Congress any matters which require immediate changes in this chapter in order to prevent abuses and evasions of this chapter or the rules and regulations promulgated thereunder or to rectify undesirable conditions with the administration of this chapter.

(b) For the five years next following the enactment of this chapter, the Secretary shall carry on a continuous study and investigation of cannabis commerce in order (1) to ascertain any defects in this chapter or in the administration thereof or any evasion of said law or said rules and regulations as may arise or be practiced, and (2) to formulate recommendations for changes in said law and the rules and regulations promulgated thereunder to prevent such abuses and evasions, and (3) to guard against the use of said law and regulations issued thereunder as a cover for the carrying on of criminal activities. Such study and investigation shall thereafter be conducted every five years.

TREATY AND CONVENTION TERMINATION

Sec. 3. It is the judgment of the Congress that articles in treaties and conventions entered into by the United States, in so far as they provide for the prohibition of the cultivation, sale, use and importation of cannabis, and any other treaty provision in conflict with the provisions of this Act be denounced and terminated, and to this end the President be, and hereby is requested and directed, to give notice to the several governments, the United Nations and other appropriate international bodies, that all such treaties and conventions will terminate and cease to be of force on the expiration of such periods following notice of denunciation or abrogation provided for in such treaties and conventions.

AMENDMENTS TO TITLE 18, UNITED STATES CODE

Sec. 4.

(a) Section 842(d) of Title 18, United States Code is amended by striking out in paragraph (5) "marihuana (as defined in 4761 of the Internal Revenue Code of 1954) or."

(b) Section 842(i) of Title 18, United States Code is amended by striking out in paragraph (3) "marihuana (as defined in 4761 of the Internal Revenue Code of 1954) or."

(c) Section 992(d) of Title 18, United States Code, is amended by striking out in paragraph (3) "marihuana or."

(d) Section 992(g) and (h), United States Code, are amended by striking out in paragraph (3) of each subsection "marihuana or."

(e) Section 2516 of Title 18, United States Code, is amended in paragraph (1) (e) by striking out "marihuana".

AMENDMENTS TO TITLE 19, UNITED STATES CODE

Sec. 5. Section 1584(a) of Title 19, United States Code, is amended in paragraph (2) in the second sentence by striking out "or marihuana," wherever it appears; and in the last sentence of such paragraph by striking out "and marihuana", and striking out "those terms by sections 102(17);" and by striking out "terms" where it first appears and inserting "term" in lieu thereof.

AMENDMENTS TO TITLE 21, UNITED STATES CODE

Sec. 6. (a) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by deleting paragraph (15) and redesignating all succeeding paragraphs.

(b) Section 202 of the Controlled Substances Act (21 U.S.C. 812) is amended by striking out Schedule I(c)(10) "Marihuana," and redesignating succeeding paragraphs.

(c) Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by

1. In subsection (b) (1) (A) striking out "marihuana"
2. In subsection (b) (1) (B) striking out "marihuana"
3. Striking out subsection (b) (4)
4. In subsection (b) (5) striking out "marihuana"
5. Striking out subsection (b) (6)
6. Redesignating subsection (b) (5) as subsection (b) (4).

AMENDMENTS TO TITLE 22, UNITED STATES CODE

Sec. 7. Section 502(a) (1), (b) of the Act of December 29, 1981, P.L. 97-113 (22 U.S.C. 2291(d))is repealed.

AMENDMENTS TO TITLE 49, UNITED STATES CODE

Sec. 8. Section 787 of Title 49, United States Code (amended by Section 1102(r) of the Comprehensive Drug Abuse, Treatment and Prevention Act of 1970 (P.L. 19-513) is amended in subsection (d) by striking out "and shall also include marihuana as defined by section 103(15) of such Act."

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